

REPORTER'S RECORD
VOLUME 2 OF 3 VOLUME(S)

TRIAL COURT CAUSE NO. 2018-04586J

IN THE INTEREST OF)	IN THE DISTRICT COURT OF
)	
)	
CHARLOTTE BRIGHT)	HARRIS COUNTY, TEXAS
MASON BRIGHT)	
)	
CHILDREN)	315TH JUDICIAL DISTRICT
)	

ADVERSARY HEARING

On the 4th day of October, 2018, the following
proceedings came on to be heard in the above-entitled
and numbered cause before the Honorable Michael
Schneider, Judge presiding, held in Houston, Harris
County, Texas:

Proceedings reported by machine shorthand.

A P P E A R A N C E S

Mr. Dan-Phi Vu Nguyen
HARRIS COUNTY ATTORNEY'S OFFICE
SBOT NO. 24068268
1019 Congress Street, Floor 17
Houston, Texas 77002
Phone: 713-274-5229
ATTORNEY FOR THE PETITIONER

Mr. Dennis Slate
SLATE & ASSOCIATES
SBOT NO. 24029836
112 East Forrest Lane
Deer Park, Texas 77536
Phone: 281-476-9447
ATTORNEY FOR RESPONDENT MOTHER

Ms. Stephanie Proffitt
PROFFITT & ASSOCIATES
SBOT NO. 24006775
917 Franklin Street, Suite 100
Houston, Texas 77002
Phone: 713-224-3400
ATTORNEY FOR RESPONDENT FATHER

Mr. Daryl Longworth
THE LONGWORTH LAW FIRM
SBOT NO. 24072214
1385 FM 359 Road, Suite 308
Richmond, Texas 77406
Phone: 832-759-5100
ATTORNEY FOR THE CHILDREN

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RESPONDENT'S

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1 MS. PROFFITT: May I proceed, Your Honor?

2 THE COURT: You may.

3 **MELISSA BRIGHT,**

4 having been first duly sworn, testified as follows:

5 **CROSS-EXAMINATION**

6 **BY MS. PROFFITT:**

7 Q. Ma'am, I want to quickly kind of go through
8 this time line with you, okay?

9 A. Okay.

10 Q. What day were you out in the front yard with
11 your children in the sprinklers?

12 A. That was July 18th.

13 Q. And approximately what time did your friend
14 come by on her way to Walmart -- HEB?

15 A. HEB. She came by about 4:30, maybe a little
16 bit before.

17 Q. And, in fact, there is some text messages
18 between the two of you that show that that was basically
19 the time frame she came by your home, correct?

20 A. Correct.

21 Q. She's also going to be here in court to testify
22 she was in your presence around 4:30?

23 A. This afternoon she will, yes.

24 Q. And then how long after she took off to HEB did
25 you begin to get the kids dried off?

1 A. I turned around, immediately turned off the
2 water, then took Mason out of the jumper, so a minute,
3 two minutes.

4 Q. And just to be clear: Was Mason mobile at that
5 time?

6 A. No. He didn't roll. He didn't crawl.

7 Q. So when you placed him in the camp chair, did
8 you have any idea that he had the ability to roll or
9 move himself out of that chair?

10 A. I did not.

11 Q. Was it an accident?

12 A. Yes, ma'am.

13 Q. And in retrospect, if you had known then what
14 you know now, would you have put him in that chair?

15 A. No.

16 Q. And you then began taking care of Charlotte,
17 and that's when you heard the thud or the screaming from
18 Mason; is that correct?

19 A. Correct.

20 Q. Did you pick him up and then drop him again?

21 A. No, ma'am.

22 Q. Did you take him and go immediately into the
23 house with both kids?

24 A. Yes.

25 Q. And I remember yesterday you said you tried to

1 nurse him to see if you could soothe him, but he was
2 having nothing of that?

3 A. Correct.

4 Q. How long -- what time exactly did you call your
5 husband?

6 A. Our phone records indicate 4:43 p.m.

7 Q. So friend leaves around 4:30ish, and within 13
8 minutes, you have dried off the kids, Mason has fallen,
9 and you've gotten in touch with your husband?

10 A. Yes.

11 Q. And we've looked at the medical records and
12 everything. Isn't it true when the ambulance arrived,
13 they had to console you first?

14 A. Yes, ma'am.

15 Q. Because you were hysterical?

16 A. Yes.

17 Q. And your husband, when he arrived at the
18 hospital after all of this was going on, he was so
19 upset, he actually threw up?

20 A. He fainted.

21 Q. Oh, I'm sorry, he fainted. And did anybody in
22 any of the records note that you were behaving in a
23 manner that was inconsistent with a mom whose child has
24 been accidentally hurt?

25 A. The special investigator that interviewed us

1 the next evening, he told me that I guess a nurse
2 noticed that I was -- he had noticed that I was laughing
3 in the ER. I don't know who. I heard it from somebody
4 else, so.

5 Q. Were you laughing?

6 A. No, ma'am.

7 Q. Were you hysterical?

8 A. Yes, ma'am.

9 Q. And all the rest of the records support that,
10 correct?

11 A. Yes.

12 Q. Now, your son's in the hospital. The CAPs team
13 starts to get involved. Suddenly you're being told that
14 there is a concern because there is excessive bleeding,
15 two injuries, and the blood in his eyes, correct?

16 A. Correct.

17 Q. And in Mr. Lavar's affidavit, he states a
18 couple things, but, one, that there was no --

19 MR. NGUYEN: Objection. Leading, Judge.

20 THE COURT: We haven't gotten to the
21 question yet.

22 MR. SLATE: I believe Mr. Nguyen called
23 this witness and she's my client. She's not
24 Mrs. Proffitt's client.

25 THE COURT: That's true, but there is case

1 law that says that the right to ask leading questions is
2 triggered not by your own client, but by alignment, and
3 I'm assuming Ms. Proffitt is aligned with --

4 MR. SLATE: She is, Judge, but at the same
5 time, each of them have their own independent right
6 under 262.201 for the agency to prove against each of
7 them that they both want to be found that they didn't
8 abuse their child. I don't necessarily know if that
9 precludes her from being able to use leading questions.

10 MR. NGUYEN: Right. By alignment, they are
11 both defending against the department.

12 THE COURT: And I think they are both
13 asking for return to the same home. They are not
14 pointing fingers at each other, so I'm going to sustain.

15 Q. (BY MS. PROFFITT) Have you reviewed the
16 affidavit filed with this court to request the removal
17 of your children?

18 A. I have.

19 Q. And did you see in that, Mr. Lavar -- or Jones
20 is his last name -- Mr. Jones' explanation as to why the
21 children needed to be removed?

22 A. I did.

23 Q. First, did you see that he claimed that there
24 was bilateral hematomas in the eyes?

25 A. He did.

1 Q. Yesterday, we saw the actual medical records
2 and the blood is in the left eye, correct?

3 A. Correct.

4 MR. NGUYEN: Objection. Leading, Judge.

5 THE COURT: That's sustained.

6 Q. (BY MS. PROFFITT) Which eye had blood in it?

7 A. The eye of impact, which was his left eye.

8 Q. In fact, whereabouts on his heads was the major
9 impact?

10 A. Just above the eye, the parietal bone, on his
11 left side.

12 Q. And as far as the bleeding is concerned, did
13 you read in his affidavit that there was no explanation
14 for the excessive bleeding?

15 A. Correct.

16 Q. Have you reviewed the medical records?

17 A. I have.

18 Q. You've been sitting in this trial for the last
19 day and a half?

20 A. I have.

21 Q. Was there an explanation for the excessive
22 bleeding?

23 A. There was.

24 Q. Now, CPS wanted to do an investigation early on
25 around the 18th, 19th of July. They informed you they

1 were going to investigate, correct?

2 A. They did.

3 Q. Did you immediately hire an attorney?

4 A. No.

5 Q. What did you do to comply with CPS's request?

6 A. I immediately signed a safety plan in which my
7 mother was going to stay at our home with us for 24/7
8 and be our monitor while the kids remained in the home.

9 Q. Now, your son was approximately 5 months old;
10 is that correct?

11 A. Yes.

12 Q. And one of your exhibits that was introduced by
13 your attorney was the pediatrician's recommendation that
14 you breastfeed for at least a year, correct?

15 A. Correct.

16 Q. Were you breastfeeding him at this point?

17 A. Solely; exclusively.

18 Q. By having your mother in the home, were you
19 able to continue that routine?

20 A. Yes.

21 Q. When you were discharged from the hospital,
22 were there any instructions about how to take care of
23 Mason?

24 A. There were.

25 Q. What were the instructions?

1 A. First, to keep him elevated while he's sleeping
2 or upright as much as possible, and to make sure if he
3 started to cry, especially cry heavily, to try to soothe
4 him as quickly as possible so that way he doesn't build
5 pressure.

6 Q. Were you aware of negative effects that could
7 happen to your son if he wasn't kept calm?

8 A. Yes.

9 Q. What were those negative effects?

10 A. There were several symptoms to look for, but
11 all of them would lead to returning him to the hospital
12 and eventually having to have a shunt.

13 Q. During the time your mother was in your home,
14 were you able to keep Mason calm and soothed during that
15 time?

16 A. We were never in the home with my mother
17 because the safety plan went from a safety plan to a
18 PCSP while we were still admitted at Texas Children's.

19 Q. After the PCSP --

20 A. Parent child --

21 Q. -- PSCP, whatever -- was signed, were you able
22 to be in the home with your son to nurture him when he
23 woke up in the middle of the night?

24 A. Not in the night, no.

25 Q. What did you do when you learned that your son

1 was upset and crying and inconsolable during the
2 evening?

3 A. My mother-in-law would wait up with him all
4 night until I could be allowed back into their home, per
5 the time constraints.

6 Q. What did you do to let CPS -- did you let --

7 A. Oh, we did. Several times.

8 Q. And what would you tell the caseworker?

9 A. The only thing that we were truly asking for
10 was to reinstate my overnight privileges. We said we
11 would work with them any way, surrender our licenses,
12 set an alarm, whatever they needed us to do so I could
13 be in the home to breastfeed at night.

14 Q. Explain what you offered as far as the home
15 alarm at your mother-in-law's?

16 A. My mother-in-law and father-in-law would set
17 their alarm. They would know the code. So that was
18 their major concern was that I could flee in the night
19 with him or her or both of them. They would set the
20 alarm so that way if I left, they would be alarmed.

21 Q. And who did you discuss this with?

22 A. Niesha and Lavar at the family team meeting.

23 Q. So both the supervisor and the caseworker were
24 given an alternative for the care of your son?

25 A. Yes.

1 Q. And did they agree to those things?

2 A. No.

3 Q. As far as the crying and everything, were there
4 negative results after that -- after you were denied
5 being able to be in the home?

6 A. Yes.

7 Q. What negative effects occurred?

8 A. His incision began to weep, his subdural space
9 filled up with fluid, and we had to be readmitted into
10 the hospital. And it was actually our second time being
11 admitted for the same thing, and they decided that he
12 was going to have to have a shunt.

13 Q. Now, certainly after CPS realized the negative
14 effects had occurred, they let you be in the home with
15 your kid after that, right?

16 A. No.

17 MR. NGUYEN: Objection. Leading, Judge.

18 THE COURT: That's sustained.

19 Q. (BY MS. PROFFITT) Were you allowed to be back
20 in the home with Mason after these negative effects
21 occurred?

22 A. Not overnight, no.

23 Q. Even though CPS saw that the negative effects
24 had occurred to your son?

25 MR. NGUYEN: Objection. Leading.

1 THE COURT: That's overruled.

2 You can answer.

3 A. Correct.

4 Q. (BY MS. PROFFITT) Was Mr. Jones and
5 Ms. Edwards, were they looking out for your son's best
6 interest, in your opinion?

7 A. No.

8 Q. Your son then continued to stay in that
9 environment; is that correct?

10 A. He did.

11 MR. NGUYEN: Objection. Leading.

12 THE COURT: That's sustained.

13 Q. (BY MS. PROFFITT) You ended up back in the
14 hospital for the shunt; is that correct?

15 A. Yes.

16 Q. What date was that?

17 A. August 14th.

18 Q. And how long were you in the hospital?

19 A. Eight days. Until the 22nd of August.

20 Q. Just to be clear: Were you allowed to be
21 there?

22 A. I was.

23 Q. And any reports that you tried to steal your
24 children away from the hospital?

25 MR. NGUYEN: Objection. Leading and

1 hearsay.

2 MR. SLATE: Response? She's not suggesting
3 the answer. She could've said no.

4 THE COURT: Yeah. I mean, if it points
5 them to a yes or no, that's not leading. Leading to me
6 is leading to one answer only, so I'll allow it.

7 A. No.

8 Q. (BY MS. PROFFITT) Did you try to take your
9 children?

10 A. Never.

11 Q. While you were in the hospital with him during
12 the shunt period, how often did Mr. Jones come visit?

13 A. Not once.

14 Q. How often did Ms. Edwards come visit?

15 A. Not once.

16 Q. You were there for eight days?

17 A. Eight days.

18 Q. After -- we heard testimony yesterday that you
19 were going to -- you wanted to go to the home closest to
20 your house, the family member closest to your house,
21 correct?

22 A. Correct.

23 Q. And that was -- can you tell me the name again?

24 A. Deloris and Bobby Jester.

25 Q. We saw the text message yesterday where he said

1 that should be okay?

2 A. Yes.

3 MR. NGUYEN: Objection. Leading.

4 THE COURT: You know, leading can be used
5 to clarify prior testimony, so that's overruled.

6 Q. (BY MS. PROFFITT) When your children were
7 ultimately removed, did you record that interaction?

8 A. Yes.

9 Q. What questions, if any, did you pose to Lavar
10 about that day when you were leaving the hospital?

11 A. I asked him what he did say that day and why it
12 was that we were already headed to Deloris' house when
13 he told me that -- well, I showed him on my cell phone
14 where he said, "Okay, that should be fine," for us to
15 head to Deloris' house, and how he made us then go back
16 to Baytown because the PD did not sign off on it yet.
17 And I reiterated the strain that put on Mason's
18 well-being, as well as Charlotte's, but specifically
19 Mason after just being involved in a major surgery, and
20 how at that point we didn't think that they were putting
21 the best interest of our children first.

22 Q. How did Mr. -- well, did Mr. Jones respond?

23 A. Yes. He argued the point of semantics; what
24 "should" means.

25 Q. Please explain what "should" means?

1 A. He said, "I said, 'Okay, that should be fine,'"
2 and he said, "I said 'should' have." And I was like,
3 well, you didn't indicate yes or no; you said, "That
4 should be fine." So in context, I took that as that
5 should be fine.

6 Q. In fact, you recorded him explaining "should"
7 and how "should" doesn't mean "yes" and all of that,
8 correct?

9 A. Yes.

10 Q. But other than the "that should be fine," did
11 he ever respond back "yes," "no," anything definitive
12 other than "that should be fine"?

13 A. Much later in the afternoon after we were
14 already being discharged and headed towards Deloris'.

15 Q. What were you asking of CPS at that time?

16 A. Just to move closer to home, have Mason settled
17 in one home rather than moving back to the previous home
18 and having to move a second time, to just go ahead and
19 move in the home so that I could be closer to home,
20 sleep in my own bed and work on my milk supply.

21 Q. Let's talk about that for a little bit. How
22 important to you was it for both of your children to be
23 breastfed?

24 A. Incredibly important.

25 Q. And as a breastfeeding mother, is that a

1 convenient thing to do?

2 A. It's the most sacrificial thing I've ever done.

3 Q. Sometimes it's painful, correct?

4 A. Very.

5 Q. And being -- how important is it for you to be
6 around this baby in order to keep your milk supply up?

7 A. Incredibly important. He is the best source at
8 getting at the milk from my breast.

9 Q. And you testified that in the beginning, you
10 had about 60 ounces of milk stored up; is that correct?

11 A. Yeah. Thereabouts, yeah.

12 Q. What was your daily production?

13 A. I produced enough to feed Mason all day. He
14 was eating about 30 ounces a day, plus I had an
15 additional -- I don't know -- four or five or six ounces
16 that I pumped, and that's when I started slowly saving
17 everything.

18 Q. As we sit here today, what is your production?

19 A. Well, yesterday, I got 13 ounces.

20 Q. How painful is this for you? And I'm not
21 talking about the physical pain; I'm talking about
22 inside your soul?

23 A. It's disheartening. Something I'm trying to do
24 for him, but I'm also under a lot of stress and it
25 impedes with how much I can produce. And I haven't seen

1 Mason often enough to keep my supply up, so it makes me
2 a little bit let down, like I'm letting him down a
3 little bit.

4 Q. Who recommended that you breastfeed your
5 child?

6 A. Mason's pediatrician.

7 Q. How many times did you tell these folks back
8 here that it was important for you to be able to
9 breastfeed your child?

10 A. Every single time I saw them.

11 Q. What was their response?

12 A. Guess it's not important. They said it was an
13 inconvenience.

14 Q. And just to be clear: Who was it going to be
15 inconvenient to?

16 A. I don't know. Maybe me; maybe Mason. I don't
17 know who they were referencing the inconvenience
18 towards.

19 Q. Was there any reason why you couldn't have
20 breastfed him all day long, as needed? Was there any
21 reason why you couldn't have done that?

22 A. I breastfed for a full year with my daughter,
23 so not that know of.

24 Q. Was it going to be inconvenient for you to live
25 in someone else's home and be able to breastfeed your

1 child?

2 A. Yes.

3 Q. Were you willing to do that?

4 A. Yes.

5 Q. Did you tell them that?

6 A. Yes.

7 Q. Did they allow it?

8 A. No.

9 Q. When did you first let Mr. Jones know that you
10 were no longer going to comply with the parent safety
11 plan?

12 A. I never let him know. My husband let him know
13 on August the 28th.

14 Q. And is that the phone call you were discussing
15 yesterday?

16 A. Yes.

17 Q. So August 28th, Lavar Jones is informed during
18 a telephone call that the kids are home?

19 A. Yes.

20 Q. When is the next time you see Mr. Jones?

21 A. September 19th.

22 Q. When was the next time you saw his supervisor?

23 A. Today -- yesterday.

24 Q. So from August 28th to September 19th, CPS
25 never made contact with you?

1 A. No.

2 Q. When Mr. Jones reached out to you to see how
3 Mason was approximately three weeks after he was
4 discharged from the hospital, what did you do?

5 A. I immediately replied. I was in the parking
6 lot of HEB, and I stopped so I could reply right away.

7 Q. Were you hiding from them?

8 A. No.

9 Q. Prior to your husband having the telephone
10 conversation with Mr. Jones, are you aware of any other
11 attempts that he made to communicate or that you made to
12 communicate with Mr. Jones that you had taken your
13 children home?

14 A. Yes. He -- we contacted him until he replied.
15 I don't know how many times -- maybe six, seven,
16 eight -- in various forms; phone call or text.

17 Q. Were you hiding the fact that you had taken
18 your children home?

19 A. No. We felt that it was our responsibility to
20 ensure that he knew.

21 Q. About two weeks prior to the removal, were the
22 children enrolled in a program?

23 A. Yeah, we call it "school." It's a preschool
24 that's technically a preschool, but it's called
25 "Mother's Day Out" at their age.

1 MS. PROFFITT: May I approach, Your Honor?

2 THE COURT: You may.

3 Q. (BY MS. PROFFITT) Ma'am, I'm going to ask you
4 if you recognize these two photos?

5 A. I do.

6 Q. Who took those?

7 A. I did.

8 Q. And do those pictures accurately reflect your
9 children on that day, September 5th?

10 A. They do.

11 MS. PROFFITT: Your Honor, at this time --

12 Q. (BY MS. PROFFITT) Have they been altered in
13 any way?

14 A. No.

15 MS. PROFFITT: Your Honor, at this time I
16 move to admit R-50.

17 (Respondent Father's Exhibit No. 50
18 offered)

19 MR. SLATE: No objection.

20 MR. NGUYEN: No objection.

21 THE COURT: So admitted.

22 (Respondent Father's Exhibit No. 50
23 admitted)

24 Q. (BY MS. PROFFITT) And these are the kiddos
25 after they've been in your care for about 15 -- 10 days?

1 A. Ten days. Eight days exactly.

2 Q. And how were they doing at that point?

3 A. Great.

4 Q. Now, yesterday, we learned that you were
5 texting Mr. Jones on approximately the 18th about him
6 coming to visit the kids; is that correct?

7 A. Correct.

8 Q. Did you ever tell him he couldn't come?

9 A. No.

10 Q. In fact, did you provide an address for him and
11 all of that information that he requested?

12 A. I wanted to make sure he knew where we lived.
13 He hasn't been to our home since July 19th. I just
14 wanted to make sure.

15 Q. And when he arrived, did you fight with him?

16 A. No.

17 Q. Did you argue with him?

18 A. No.

19 Q. And we learned yesterday it was after the
20 children's bedtime that he showed up?

21 A. Yes.

22 Q. And that he came for almost 30 minutes before
23 the police arrived?

24 A. Yes.

25 Q. Can you think of any instance of your actions

1 or your husband's actions that would support Mr. Jones'
2 statement on that audio that you-all were combative with
3 him?

4 A. No. We didn't say a single cuss word toward
5 him. We didn't attack him in any way personally with
6 our words or otherwise.

7 Q. Well, I want to be very clear: You had this
8 man in your life for about two months, between July 18th
9 and September 19th, had you ever raised your voice at
10 him, cussed at him or threatened him?

11 A. Raised my voice to show my frustration? Yes.
12 But never in an assertive or aggressive manner toward
13 him. Never cussed at him, nothing.

14 Q. Even as we sit here today, are you mad at
15 Mr. Jones?

16 A. I'm trying to practice forgiveness, but, yes,
17 I'm mad.

18 Q. And when he said he was fearful of you and your
19 husband, do you know of any basis for that fear?

20 A. No.

21 Q. Did he seem fearful when he knocked on your
22 door at 7:30 at night without police accompaniment?

23 A. No.

24 Q. When y'all had learned that he had gone to
25 court without notifying you, did you-all get aggressive

1 with him then?

2 A. No.

3 Q. Did you throw him out of your house?

4 A. No.

5 Q. Did you help get the kids ready?

6 A. Yes.

7 Q. Now, yesterday we saw pictures with your
8 daughter's eye?

9 A. Yes.

10 Q. When the children left, were any instructions
11 given to Mr. Jones about your children?

12 A. Yes, for both of them.

13 Q. And what did you tell him specifically about
14 Charlotte?

15 A. Charlotte has a dairy intolerance and she can't
16 have dairy or cow's milk, so it was important that she
17 didn't have it because she would break out in a really
18 bad diaper rash.

19 Q. Are you certain you told Mr. Jones that?

20 A. My husband wrote it on a piece of paper and we
21 explained the piece of paper to him as we handed it to
22 him.

23 Q. Y'all provided written instructions to this
24 man?

25 A. So he could give it to the foster home.

1 Q. Why were you doing that?

2 A. To protect our daughter.

3 Q. Now, yesterday we saw the photograph with the
4 black eye and the gash on the face, correct?

5 A. Yes.

6 MS. PROFFITT: May I approach again, Your
7 Honor?

8 THE COURT: You may.

9 Q. (BY MS. PROFFITT) I'm going to show you what's
10 marked as R-49. Do you recognize that?

11 A. I do.

12 Q. And who is that in that photograph?

13 A. That's Charlotte.

14 Q. And who took that photograph?

15 A. Deloris Jester.

16 Q. Did you see your daughter in this condition?

17 A. I wasn't allowed to.

18 Q. You weren't allowed to see your daughter?

19 A. At a supervised CPS visit, yes, I was.

20 Q. And did Deloris provide this photograph to you?

21 A. She did.

22 Q. And does it -- you never saw this, though,
23 personally?

24 A. No.

25 Q. Okay. As far as Charlotte is concerned, had

1 she ever suffered any injuries prior to CPS taking over?

2 A. No.

3 Q. Was that the same when she was in CPS custody?

4 A. No.

5 Q. You testified yesterday that there is about 80
6 or so family members, something like that. What was the
7 number?

8 A. I think in the greater Houston area, like 50 --
9 around 50, 55.

10 Q. When Mr. Jones testified in his affidavit that
11 he had made all efforts to avoid removal of the
12 children, is that a true statement?

13 A. No.

14 Q. In fact, what did you do the night of removal
15 regarding placement of your children?

16 A. When they told us that Deloris, who was at our
17 home, could not take them, they had to go to a foster
18 parent, we contacted a family friend, a friend of
19 Deloris', Allie Mitchell. We contacted her.

20 Q. Why did you contact Allie Mitchell?

21 A. She works for a program called Loving Houston
22 Fostering and Adopting.

23 Q. Did you give that option to Mr. Jones?

24 A. Yes. She had a foster home available to take
25 both kids that night.

1 Q. Did he take that option?

2 A. No.

3 Q. Instead, he put them somewhere where they got
4 hurt?

5 A. He separated them first.

6 Q. Now, as we sit here today, are you asking that
7 the children be returned to you and your husband?

8 A. Yes.

9 Q. Have you done anything to hurt your child?

10 A. Never.

11 Q. The day of the incident, your son had swelling
12 on both sides of his head, correct -- or the same side,
13 but the front and back of his head, correct?

14 A. Yes.

15 Q. And fractures at both of those spots?

16 A. Yes.

17 Q. And based on -- have you reviewed Dr. Mack's
18 report?

19 A. Yes, I've got it.

20 Q. Do you believe that those injuries occurred at
21 the same time?

22 A. I do.

23 Q. And if you were to tell a story that, "Oh,
24 yeah, I forgot. He got hit a few weeks earlier," that
25 wouldn't be the truth, correct?

1 A. No, it would not be the truth.

2 Q. Have you been completely honest with CPS?

3 A. I have been.

4 Q. Have you been completely honest with the
5 doctors?

6 A. I have been.

7 Q. Have you been completely honest with this judge
8 as you testified that you did not harm your child?

9 A. I have been.

10 MS. PROFFITT: Pass the witness, Your
11 Honor.

12 THE COURT: All right. Mr. Longworth?

13 **CROSS-EXAMINATION**

14 **BY MR. LONGWORTH:**

15 Q. I want to talk to you about this camping chair.
16 Can you show me with your hands how that chair would
17 fold?

18 A. It's got four posts, and all four posts come
19 together to make a --

20 Q. Squeezes in instead of fold up?

21 A. It -- I guess it squeezes in, but it squeezes
22 in from all four corners, not just in half.

23 Q. So if you put weight in the middle, it wouldn't
24 then fold up, would it?

25 A. No.

1 Q. And you have to push it from the sides to make
2 it go in?

3 A. Yeah, all four sides.

4 Q. And then after the fall, what position was the
5 chair in?

6 A. I actually don't recall. I was asked that that
7 night, but I didn't take time to look at the chair.

8 Q. And do you make it a habit of putting a
9 5-month-old on a chair on the concrete?

10 A. I don't make that a habit, no, sir.

11 Q. About how many times do you think you've done
12 it?

13 A. A camping chair in the driveway? Exactly one
14 time.

15 Q. Have you put the kid on any other kind of chair
16 with a hard surface underneath?

17 A. He would be, like, in, like, a newborn lounger
18 on the couch when he was a little smaller.

19 Q. Have you been out in the driveway with him
20 before with your daughter?

21 A. Yes.

22 Q. And what was he in the whole time that he
23 was -- you were out there?

24 A. I guess various things. That specific day, he
25 was in the jumper. He's been in a stroller. That's all

1 that I can recall.

2 Q. When you're outside with your son, how often do
3 you walk away from your son?

4 A. I never walk away from him.

5 Q. How many times do you turn your back and not
6 pay attention to him?

7 A. Not pay attention to him?

8 Q. For instance, you said that you -- in this case
9 that you turned away from him to change Charlotte, so
10 you weren't looking at him at that point, correct?

11 A. But if I was looking toward him and had my back
12 toward Charlotte, I would not be paying attention to
13 her.

14 Q. Were you paying attention to him when you had
15 your back turned to him?

16 A. I was multitasking as a mother of two under 2
17 as efficiently as I know how.

18 Q. The answer is yes or no. Were you paying
19 attention to Mason when you had your back turned to him?

20 A. Yes.

21 Q. You were paying attention to him?

22 MR. SLATE: Objection, Your Honor. Asked
23 and answered.

24 THE COURT: That's overruled.

25 You were paying attention to him?

1 THE WITNESS: Yes.

2 Q. (BY MR. LONGWORTH) How were you paying
3 attention to him with your back turned?

4 A. He was, like, within arm's reach. It was,
5 like, two steps and I was as close to him as possible
6 that if he would cry out, I could attend to him.

7 Q. Did you see him with your eyes?

8 A. I did not.

9 Q. When you were talking to the neighbor, was he
10 in the jumper whole time?

11 A. He was.

12 Q. Were your eyes on him when you were talking to
13 the neighbor?

14 A. No, but hers were.

15 MR. LONGWORTH: Objection. Nonresponsive
16 after "no," Your Honor.

17 THE COURT: That's sustained after "no."

18 Q. (BY MR. LONGWORTH) So she left about 4:30,
19 correct?

20 A. Thereabouts, yes.

21 Q. And about what time -- about how many minutes
22 do you say she was there?

23 A. Oh, five, six, seven.

24 Q. So seven at the most, so 4:37. And then after
25 she left, how long was it until you changed Charlotte's

1 diaper and took your eyes off of Mason?

2 A. I didn't change her --

3 MR. SLATE: Objection, Your Honor.

4 Compound question.

5 THE COURT: Overruled.

6 A. I didn't change her diaper. I just took her
7 wet bathing suit off.

8 Q. (BY MR. LONGWORTH) What time was that?

9 A. I didn't have a clock. I don't know.

10 Q. Well, you estimated your neighbor's visit was
11 five, six or seven minutes, so.

12 A. Two minutes, three.

13 Q. And then when Mason fell, did you hear -- what
14 did you hear?

15 A. Well, I actually heard the impact. But before
16 I could register that it was -- that's actually what had
17 occurred, I heard him crying and that's what I turned
18 around to.

19 Q. So did you hear two impacts or one?

20 A. One impact.

21 Q. And then how long was it from the time he fell
22 until you called your husband? What kind of gap are you
23 looking at?

24 A. Well, I immediately scooped him up and ran
25 inside and -- I don't know -- another minute, two

1 minutes.

2 Q. And then you said that you noticed there was a
3 bump on his head?

4 A. Incredibly swollen out, yes.

5 Q. What actions did you take to address the bump
6 on the head other than breastfeed?

7 A. Call 911.

8 Q. Before you called 911 and you were trying to
9 breastfeed him, did you take any actions for the bump on
10 the head?

11 A. No. There was no open wound.

12 Q. Just the bump. So you left the bump alone
13 until you called 911 and got instructions?

14 A. I didn't want to do anything to further harm
15 him.

16 Q. And then after you spoke to your husband, you
17 called 911, correct?

18 A. Yes.

19 Q. And then you said that they were giving you
20 instructions on the phone; is that correct?

21 A. Most of my instruction was to remain calm,
22 remain calm, breathe.

23 Q. Did they give you any instructions on what to
24 do with Mason?

25 A. She told me that the crying was a good thing.

1 She didn't really ask too many questions about him at
2 that time, and so I was mostly frantically yelling at
3 her as opposed to her advising me of anything to do.

4 Q. But at this time Mason was lying on the floor?

5 A. I had laid him down on the floor. I was just
6 sitting right next to him.

7 Q. Did they give you any instructions about moving
8 him?

9 A. They didn't tell me to move him, not move him
10 or otherwise.

11 Q. Did you tell them that he was on the floor?

12 A. No. They never asked.

13 Q. And then when your husband got home, you
14 testified that he ran and scooped the child up?

15 A. He did.

16 Q. And did that concern you that he scooped the
17 child up and the child had a head injury?

18 A. I was already maxed out at my concern level.
19 There was no more or less concern.

20 Q. So are you telling me you weren't concerned
21 that he scooped up your child from a head injury and
22 picked him up from the floor?

23 A. I was mostly concerned with getting the
24 ambulance to our home, yes.

25 Q. So just answer my question. Were you concerned

1 about your husband's scooping him up with the head
2 injury?

3 A. It did not occur to me. I cannot answer yes or
4 no. It is -- I don't know how to answer that, I'm
5 sorry.

6 Q. Well, if you didn't think about it, then it
7 would be no, wouldn't it?

8 MR. SLATE: Objection, Your Honor.
9 Sidebar.

10 THE COURT: That's overruled.

11 A. I guess, no.

12 Q. (BY MR. LONGWORTH) I want to talk to you
13 about -- when -- the times that Mason was in the
14 hospital. Did you stay overnight with him?

15 A. Every single moment he was in the hospital, I
16 was in the hospital.

17 Q. And you never left the hospital until he
18 checked out?

19 A. I left one time to go to a doctor's appointment
20 his first day after his surgery; and his last day, I
21 left one time to get supplies together for Missy to pick
22 up.

23 Q. And did CPS or the social worker at the
24 hospital clear you to be there overnight?

25 A. Yes. The hospital was my approved safety

1 monitor.

2 Q. I want to talk to you about -- the original
3 safety plan was with your mother?

4 A. Yes.

5 Q. And in the affidavit, there is some language in
6 there that she was disapproved for some kind of
7 investigation regarding an aunt. Are you aware of that?

8 A. Mine? As in Charlotte's aunt; my sister?

9 Q. So do you know anything about that situation?

10 A. I --

11 MR. SLATE: Objection, Your Honor.
12 Relevance.

13 THE COURT: Do you know anything about
14 which situation?

15 MR. LONGWORTH: We're talking about the
16 original placement with the monitor being the maternal
17 grandmother, and I'm asking her if she's aware why that
18 person was disqualified. They made an issue of that
19 person having to leave, so I'm just trying to clear that
20 up.

21 MR. SLATE: That's not what the original
22 question was.

23 MS. PROFFITT: It is that person, but it
24 never occurred.

25 THE COURT: You mean the placement didn't

1 happen?

2 MS. PROFFITT: Right.

3 THE COURT: Okay.

4 MR. SLATE: Nor was it the reason CPS gave
5 her for not doing the safety plan.

6 THE COURT: So what is the relevance of
7 that situation if it wasn't actually a placement?

8 MR. LONGWORTH: It was my understanding
9 that she was going to be a monitor in the house; and
10 from what I heard, I thought that it had occurred and
11 then they had to get away from somebody being in the
12 home with her. So that was the relevance as why that
13 person couldn't be there.

14 MR. SLATE: No, they changed it. That's
15 not --

16 MS. PROFFITT: That was the initial plan.
17 The initial plan was maternal grandmother was going to
18 be the supervisor in the home; but before they could
19 even get released from the hospital from the original,
20 they disapproved grandma -- they completely stopped the
21 safety plan and went to the PSCP -- PCSP.

22 MR. LONGWORTH: Then it would be relevant
23 if she knew why that person was disqualified because the
24 safety plan may have stayed the same. We'll find out
25 later through testimony from the caseworker.

1 MR. SLATE: Edwards is on tape saying that
2 she's the one that disapproved the safety plan.

3 MR. LONGWORTH: I would object to Counsel
4 testifying.

5 THE COURT: That's overruled.

6 I'm going to allow you to answer, if you
7 know.

8 A. The safety plan was uprooted because they had
9 received the preliminary report from the CAP team, and
10 it was changed from a safety plan to a PCSP.

11 Q. My other question was regarding your mother, I
12 guess. Do you know why she was disqualified? And we
13 were talking about something to do with an aunt, and I
14 was asking you if you knew anything about that.

15 MR. SLATE: Objection, Your Honor. Calls
16 for speculation on the part of this witness as to why
17 CPS disapproved.

18 MR. LONGWORTH: If she knows, Your Honor.

19 THE COURT: If you know from CPS telling
20 you.

21 A. CPS ran an original background check with my
22 mom. She was clear to stay with Charlotte. And then I
23 notified CPS of my involvement with CPS, and my only
24 involvement with CPS prior to this was taking in my
25 17-year-old sister. I have no knowledge of

1 investigation, open, close, pending, otherwise regarding
2 her and my mom.

3 Q. (BY MR. LONGWORTH) Was the alleged perpetrator
4 when you took in the 17-year-old sister, was that your
5 mother?

6 MR. SLATE: Objection, Your Honor. Calls
7 for speculation. She just said --

8 MR. LONGWORTH: If she knows.

9 MR. SLATE: She just said she has no other
10 knowledge.

11 THE COURT: Is that true you have no
12 personal knowledge?

13 THE WITNESS: I don't know actually what
14 happened.

15 THE COURT: Okay. Next question.

16 Q. (BY MR. LONGWORTH) I'm going to talk about the
17 safety plan when the children were with, I guess, your
18 husband's parents?

19 A. Yes.

20 Q. Okay. And then you weren't supposed to stay
21 there the night, correct?

22 A. Correct.

23 Q. And you testified that you were staying at a
24 friend's house?

25 A. Yes. It was not my friend. It was friends of

1 Stan and Melissa Frazier.

2 Q. Okay. And what was the address that you went
3 to?

4 A. It was a couple streets down. I actually
5 stayed at two different addresses. The first one was a
6 few streets down.

7 Q. What was the street name?

8 A. I don't know. I just put it in my cell phone.

9 Q. What was the name of the people who owned that
10 house?

11 A. Oh, gosh. I don't remember their names, but
12 they had four kids; two of which were adopted and two
13 which were they own.

14 Q. The street for the other home you stayed in, do
15 you know that street name?

16 A. Something that started with "Honey." Honey
17 Road, Honey Lane.

18 Q. Do you know the street number?

19 A. No.

20 Q. Do you know the name of the people at that
21 house?

22 A. Yes. I stayed with them much longer. That was
23 Karen and Ronnie Webb.

24 Q. And then later I think you testified that while
25 the placement was with Deloris, that you stayed

1 somewhere else in the evening, correct?

2 A. They were never placed with Deloris. We never
3 got to that point.

4 Q. Okay. Your testimony, you talked about staying
5 with a youth minister or some kind of minister?

6 A. It was the associate pastor of the church, and
7 that was Mr. Ronnie Webb. He is the associate pastor of
8 their church.

9 Q. And that was the second one we talked about?

10 A. Yeah. The other one I stayed at for two
11 nights, and then I moved over to the Webbs.

12 Q. And have you been contacted by law enforcement
13 in this case?

14 A. The only cop I talked to was the cop that
15 showed up at the night of removal.

16 Q. What did they tell you?

17 A. He didn't tell me much. He read the court
18 order and said, yes, they have to go.

19 Q. So you haven't been contacted by law
20 enforcement regarding a pending injury to a child case
21 or anything like that, have you?

22 A. No.

23 Q. And you're not aware of one pending right now,
24 are you?

25 A. No.

1 MR. LONGWORTH: Pass the witness.

2 MR. NGUYEN: Brief redirect?

3 THE COURT: Yes.

4 **REDIRECT EXAMINATION**

5 **BY MR. NGUYEN:**

6 Q. So I guess just for clarification: Under the
7 safety plan -- under the PCSP with your -- with maternal
8 grandparents, you weren't allowed to have overnights,
9 correct?

10 A. Correct.

11 Q. And the initial plan prior to that was that
12 she'd be staying in your house as a safety monitor?

13 A. No, that was never made.

14 Q. Was there ever a plan for someone to be a
15 safety monitor in your home?

16 A. Yes. That would be my mother, not his mother.

17 Q. Your mother. Okay, I apologize. And it wasn't
18 until after they got the report from the CAPs team and
19 explained the severity of the child's injuries that it
20 had to be a PCSP as opposed to a safety monitor in her
21 home, correct?

22 MR. SLATE: Objection. Calls for
23 speculation.

24 MR. NGUYEN: If that's what she believes,
25 Judge.

1 MR. SLATE: He's asking her what the
2 decision making for CPS was.

3 MR. NGUYEN: I'll rephrase.

4 THE COURT: Okay.

5 Q. (BY MR. NGUYEN) You received the report from
6 the CAP team explaining the severity of the child's
7 injuries, correct?

8 A. I never received it at this point.

9 Q. You were made aware of it?

10 A. I was made aware of it, yes.

11 Q. And you were aware that you -- in the PCSP with
12 the paternal grandparents, you could not stay overnight,
13 correct?

14 A. Correct.

15 Q. So it would be safe to assume that the child
16 could not be at any house -- whether it's yours or at
17 the paternal grandparents' house -- overnight, correct?

18 A. They could be overnight with them, but not with
19 me.

20 Q. I meant with you and the child together?

21 A. Correct.

22 Q. Okay. So I just wanted to clear that up. And
23 the homes that you were staying in over in Baytown, was
24 there -- did they give you a time limit as to how long
25 you could stay there or?

1 A. It was never discussed.

2 Q. Okay. And what did CPS say to you as to why --
3 at one point they did approve the Jesters; but then
4 subsequently after that, they recommended that the child
5 not be moved to the Jester's yet until -- but that the
6 child remains with paternal grandparents?

7 MR. SLATE: Objection, Your Honor. That
8 assumes facts not in evidence. There is no testimony
9 that CPS ever did not approve the Jesters.

10 MR. NGUYEN: I'm asking her what did the
11 department say to her as to why the child was not
12 initially placed with the Jesters when they had
13 approved -- initially not approved, but the supervisor
14 and the caseworker approved -- but pending the PD
15 approval, what did CPS say to her as to why they did not
16 place the child with the Jesters?

17 MR. SLATE: Assumes facts not in evidence.
18 Only thing that's ever been testified to is they just
19 kept saying "PD didn't approve," so assumes facts not in
20 evidence.

21 THE COURT: As phrased, that's sustained.
22 Feel free to rephrase.

23 MR. NGUYEN: Yes, Your Honor.

24 Q. (BY MR. NGUYEN) In your mind, you believe the
25 caseworker and the supervisor approved the Jesters,

1 correct?

2 A. They were supposed to have approved them by the
3 19th, and we were never give a reason --

4 Q. Right. They were waiting for a signature from
5 the program director?

6 A. That's what was communicated to us.

7 Q. Okay. And while you were waiting for that
8 signature, was there any communication from Mr. Jones or
9 Ms. Edwards as to what the reasons were as to why the
10 child could not be placed with the Jesters?

11 A. They never said yes, and they never said --

12 MR. SLATE: Objection, Your Honor.

13 Nonresponsive. Yes or no question.

14 THE COURT: That's sustained.

15 It's a yes or no.

16 Q. (BY MR. NGUYEN) What was communicated to you?
17 What did they say to you?

18 A. It was continually pending. There was no
19 confirmed yes or no from CPS about the Jesters.

20 Q. So you understood -- were you instructed by
21 Mr. Jones or Ms. Edwards as to what could potentially
22 happen if the safety plan or the PCSP was violated?

23 A. I don't recall a time where I was told.

24 Q. Okay. What, in your mind -- you were being as
25 compliant as you could be for as long as you could be,

1 correct?

2 A. Correct.

3 Q. Prior to that, what did you think the
4 consequence would be if you violated the parental child
5 safety placement?

6 A. First, I thought they were going to court order
7 the PCSP and no longer be voluntary at the Jesters, or
8 they would dismiss our case, or they would just go ahead
9 and bring us to a show cause.

10 Q. Okay. So you were aware some legal court
11 action could occur?

12 A. We were hoping for it.

13 Q. Okay. Now, your child, Mason, had just been
14 released from the hospital, correct?

15 A. Yes.

16 Q. And that was around August 22nd?

17 A. Yes.

18 Q. And Mason was still in a medically fragile
19 state, correct?

20 A. Can you explain?

21 Q. Well, don't you think it would be in the
22 child's best interest to remain with the placement,
23 specifically with the paternal grandparents, who have
24 been there from the very beginning since the fall and
25 understand the medical ramifications of not keeping him

1 calm, preventing him from crying or making sure that
2 Charlotte doesn't eat dairy, that sort of thing, who's
3 more familiar with the children's medical needs as
4 opposed to the Jesters who have not been familiar with
5 that as of yet?

6 A. No.

7 Q. You don't? Okay. So you think -- convenience
8 aside, did the Fraziers do a good job of caring for the
9 children during this short time that they were there?

10 A. Yes.

11 Q. Did the Fraziers know what needed to be done
12 and how to care for them if an emergency arose?

13 A. Yes.

14 Q. Okay. And they were familiar with the injuries
15 that Mason sustained, correct?

16 A. Yes.

17 Q. They were familiar with what Charlotte could
18 eat or cannot eat, correct?

19 A. Yes.

20 Q. Okay. The Fraziers -- I mean the Jesters --
21 have not yet cared for those kids yet, have they?

22 A. That's not true.

23 Q. So they've stayed overnight?

24 A. Yes.

25 Q. Is that with you there?

1 A. No.

2 Q. Okay. So they babysat the kids before?

3 A. No. Would you like me to explain?

4 Q. So yesterday, you mentioned Ms. -- there were
5 two people that you mentioned; one 18-year-old that went
6 to college that used to babysit for you, and I believe
7 it was your mother; isn't that correct?

8 A. Yes.

9 Q. Okay. But you didn't mention the Jesters ever
10 watching your kids?

11 A. Because they did not prior to the injury of
12 July 18th.

13 Q. So how would they know what to do and how to do
14 it -- how to care for the children if they've never done
15 it before, the specific instructions or the specifics on
16 how to care for these -- the medically fragile child?

17 A. Are you referring to just Mason or just
18 Charlotte?

19 Q. Both of them.

20 A. Well, Charlotte -- just Charlotte stayed at
21 their home for three or four nights while we were in the
22 hospital because she was comfortable with Cierra prior
23 to moving out and going to the PCSP.

24 Q. Who's Cierra?

25 A. The 18-year-old that went to college that

1 babysat them.

2 Q. And she's the daughter of the Jesters?

3 A. Yes.

4 Q. Okay. Was Cierra there when she was -- Cierra
5 was watching Charlotte while y'all were out at the
6 hospital?

7 A. Both Cierra and Deloris, yes.

8 Q. Okay. And so would you say, as a mother, you
9 would make any sacrifices necessary to protect your
10 children?

11 A. Yes.

12 Q. And would you say that -- with the safety plan
13 in place -- I mean, with the PCSP with the Fraziers and
14 you having the ability to stay at someone else's home to
15 be able to be close to Mason's breastfeeding, why didn't
16 you just continue doing that as opposed to removing the
17 child from the Fraziers?

18 A. Breast milk is directly affected by stress.
19 And I don't know if you've lived in and out of a
20 hospital and somebody else's home for 40 days in a
21 suitcase, but that's very stressful; physically,
22 emotionally and otherwise, and it was not the best
23 situation for me to create the breast milk that Mason
24 needed.

25 Q. Okay. So you're normally a stay-at-home mom?

1 A. Yes.

2 Q. And you had unfettered access to both the
3 paternal grandparents' home, in and out whenever you
4 wanted, just as long as it's not overnight, right?

5 A. Yes.

6 Q. Now, during the daytime, you could just stay at
7 the paternal grandparents' house all day long and then
8 just go back to the other house and go to sleep,
9 correct?

10 A. Yes.

11 Q. Okay. And you could've continued to do that.
12 And you don't think that that would be a very
13 stress-free arrangement, don't you think?

14 A. I hadn't slept in my bed in 40 days. It's not
15 stress free.

16 Q. Okay.

17 THE COURT: Tell you what. We need to take
18 a little break. There is a juvenile disposition that I
19 need to do that I understand is less than ten minutes,
20 so this might work out as a break for everyone and then
21 we'll get back as soon as possible. Thank you.

22 (Brief recess)

23 Q. (BY MR. NGUYEN) Ma'am, you stated that -- you
24 stated that your production of breast milk can be
25 reduced based on stress; is that what your testimony

1 was?

2 A. Yes.

3 Q. Okay. And -- but you wanted Mason to be
4 brought home with the Jesters because it is more
5 convenient for you, correct?

6 A. Yes.

7 Q. Okay. But there was no restrictions during the
8 daytime other than the fact you had to be supervised
9 around Mason. You could be around Mason at any time in
10 the home of the Fraziers, correct?

11 A. That is correct.

12 Q. And you understood the medical fragile state
13 that Mason was in shortly after he was released from the
14 hospital, correct?

15 A. Correct.

16 Q. And the Fraziers were, would you agree, at that
17 point in time after discharge, were better equipped and
18 more knowledgeable about his medical needs than the
19 Jesters at that point in time?

20 A. No.

21 Q. But you can understand why CPS would think
22 that, correct?

23 A. No.

24 Q. Don't you think it would have been in Mason's
25 best interest to have that consistency of caregivers as

1 opposed to multiple movements?

2 A. No.

3 Q. Now, are you saying that because it would be
4 inconvenient with you if the child was with the Fraziers
5 as opposed to the Jesters?

6 A. It is not an inconvenience.

7 Q. Okay. So I'm not understanding where this talk
8 about stress is coming from.

9 MR. SLATE: Objection, Your Honor.
10 Sidebar.

11 THE COURT: That's not a question.

12 Q. (BY MR. NGUYEN) Okay. Where is this stress
13 coming from other than the fact that you are concerned
14 about Mason's well-being?

15 A. The physical stress on my body from not living
16 in my own home, sleeping in my own bed, living in and
17 out of a suitcase, spending the night at somebody else's
18 house that I don't know very well. Every single day it
19 has a very physical effect on me, physical effect on my
20 milk supply.

21 Q. Do you ever feel stressed when you stay at a
22 hotel?

23 MS. PROFFITT: Objection, Your Honor.
24 Relevance.

25 THE COURT: Relevance? "Stay in a hotel,"

1 meaning?

2 MR. NGUYEN: I'm trying to compare the two.
3 She says she's stressed because she sleeps at another
4 place and I'm trying to figure out how is that
5 stressful, physically stressful on your body? Are you
6 lifting anything? Are you exerting yourself physically
7 when you're in someone else's home?

8 THE COURT: You have the State invading
9 your privacy and the lives of your children, that kind
10 of thing?

11 MR. NGUYEN: I understand. That's what I'm
12 trying to say. Where is the stress coming from, from
13 her perspective?

14 THE COURT: Okay. Ask away.

15 Q. (BY MR. NGUYEN) I mean, where is this coming
16 from?

17 A. There is somebody in every single intimate part
18 of my life dictating where I can and cannot live, how I
19 can and cannot raise my children. And I'm in fear every
20 single moment of the fact of what if I do something that
21 isn't in accordance of CPS, second guessing every single
22 decision I make --

23 THE REPORTER: Ma'am, if you could slow
24 down, please.

25 THE WITNESS: I'm sorry.

1 A. -- about either child. It's very stressful
2 dealing with CPS, and I did not even have time to
3 process the actual trauma that occurred.

4 Q. (BY MR. NGUYEN) Okay. So you would still be
5 dealing with CPS even after the child moved to the
6 Jester's, correct?

7 MR. NGUYEN: Objection, Your Honor. Calls
8 for speculation as to what CPS was going to do with
9 their case.

10 THE COURT: That's sustained as phrased.

11 Q. (BY MR. NGUYEN) The child was moved back to
12 the Jesters subsequently, correct?

13 A. Never. The kinship placement as of --

14 Q. Wait. So the children are not with the Jesters
15 right now?

16 A. They are today.

17 Q. Okay. And you're still dealing with CPS?

18 A. Yes.

19 Q. Okay. So that hasn't changed, correct?

20 A. Yes.

21 Q. You're still dealing with that stress even with
22 the child with the Jesters, correct?

23 A. Yes.

24 Q. So you could've still dealt with CPS and not be
25 in violation of the safety plan and keep Mason in the

1 home of the Fraziers temporarily until he was more
2 medically stable enough to be moved or have the Jesters
3 be approved as a PCSP, correct? You could've done that?

4 A. No.

5 Q. So were the Fraziers not doing a good job
6 watching your kids?

7 A. That's not what I said.

8 Q. Why wouldn't you want to wait until --
9 understandably, there was a long passing of time that
10 occurred, but why did you wait to ensure that you get
11 the PD approval for the placements with the Jesters as
12 opposed to just outright removing them without getting
13 that approval first?

14 A. Their major concern is Mason's fragile medical
15 state. Well, it made no difference to Mason if I went
16 straight from the hospital to Deloris or Bobby's or
17 straight from the hospital to Missy and Stan's to Mason
18 in his medical fragile state. What made a difference
19 was leaving the hospital, living half in and half out of
20 a truck just to move to Deloris' later? That's not in
21 his best interest.

22 Q. I understand. But as a result, this could've
23 been avoided if that PCSP was not violated, wouldn't you
24 agree?

25 MR. SLATE: Objection, Your Honor. Vague

1 as to what could be avoided.

2 THE COURT: Vague. And if I'm
3 understanding you correctly, it calls for her to
4 speculate as to whether it could've been avoided.

5 MR. NGUYEN: Yes, sir. I'll move on.

6 Q. (BY MR. NGUYEN) Now, back to the original
7 incident in which Mason got injured. Prior to Mason
8 being born, you've raised Charlotte for two years?

9 A. A little over a year.

10 Q. How far apart are they?

11 A. 19 months.

12 Q. And dealing with just one child is a pretty
13 daunting task; is that correct?

14 A. Yes.

15 Q. Okay. And juggling two kids is entirely
16 another, correct?

17 A. Yes.

18 Q. That's a different kind of hardship, correct?

19 A. I wouldn't use the term "hardship," but, yes.

20 Q. Okay. It's a lot more exhausting, I guess for
21 lack of a better word?

22 A. Yes.

23 Q. Okay. And you're not giving your undivided
24 attention to just one child. You're dividing your
25 attention to both kids, correct?

1 A. Yes.

2 Q. Now, when you sat Mason on the chair on the
3 declining driveway, did you place Charlotte in a car to
4 change her clothes or dry her off?

5 A. Did I place her what?

6 Q. Did you place Charlotte in the backseat of a
7 car to dry her off?

8 A. No.

9 Q. There was no car in the driveway?

10 A. No. The car was in the garage.

11 Q. Car was in the garage. So the driveway was
12 clear except for the chair, correct?

13 A. And the bouncer and the sprinkler.

14 Q. Okay. And so Charlotte was just standing,
15 correct?

16 A. Yes.

17 Q. On the driveway. And you were drying her off?

18 A. I didn't dry her off. I just took her swimsuit
19 off.

20 Q. Took her swimsuit off, sorry. Wouldn't you
21 agree, looking back, that the chair with the four posts
22 is not a very secure chair, correct?

23 A. I wouldn't say it's the chair's fault.

24 Q. I understand. But it's not secure enough to
25 place a baby or prevent the child from rolling off,

1 correct?

2 MR. SLATE: Objection, Your Honor. Calls
3 for speculation.

4 THE COURT: You can answer if you feel like
5 you know the answer.

6 I mean, the question is: It's not secure
7 enough?

8 MR. NGUYEN: Yes. Her opinion as to how
9 secure she felt the chair was.

10 A. I wouldn't have sat him in the chair had I
11 thought something like this was going to happen.

12 Q. (BY MR. NGUYEN) I understand. And that was a
13 mistake, correct?

14 A. An accident.

15 Q. An accident. It was an accident, a minor lapse
16 in judgment, wouldn't you agree?

17 A. I don't think I would clarify it as that.

18 Q. Well, you're certainly not going to do that
19 again?

20 A. Correct.

21 Q. And normally, you would have a child secured in
22 either a baby seat, in one of those chairs with the
23 little tables. At least they are strapped down and
24 secured, correct?

25 A. Correct.

1 Q. And you're talking about a 5-month-old who's
2 starting to discover his mobilities and stuff, correct?

3 A. Yes.

4 Q. Starting to learn how to crawl?

5 A. No.

6 Q. Okay. Is he starting to roll over a little
7 bit?

8 A. He wasn't really good at the time, no.

9 Q. When he was on the chair, did he somehow kick
10 off -- kick himself off to land backwards?

11 A. Yes.

12 Q. Okay. So he's beginning to make use of his
13 legs?

14 A. Yes.

15 Q. Okay. As any developmental child would do at
16 this age, right?

17 A. Yes.

18 Q. So you would agree that had you not placed that
19 child on that chair, then he would not have been
20 injured, correct? If you had sat him down on the
21 driveway, don't you think it would've prevented him from
22 getting -- falling maybe a foot or two off the ground on
23 a concrete driveway?

24 A. Yes.

25 Q. So this was preventable, wouldn't you agree?

1 A. In hindsight, every accident is.

2 Q. I understand. And this is a learning
3 experience for you, wouldn't you agree?

4 A. Yes.

5 Q. Okay. Now, I want to talk to you about
6 Mr. Jones.

7 A. Okay.

8 Q. Up until the night of the removal, how would
9 you classify your relationship with him?

10 A. He's a very pleasant human being. He was
11 always kind to us. He never yelled at us, picked us
12 apart.

13 Q. Never disrespected you?

14 A. No.

15 Q. Never condescending?

16 A. No.

17 Q. Never thought that, I work for the government.
18 I got all the power and this and that. Never made you
19 feel that way, correct?

20 A. No.

21 Q. Okay. But you understand that as a department
22 representative, he did have a job to do as an
23 investigator, correct?

24 A. Yes.

25 Q. And did you feel that whatever mistakes that

1 you've claimed that he's made and such, you believe that
2 he's done any of this to you maliciously or tried to
3 intentionally want to hurt you or your family?

4 A. Lavar specifically?

5 Q. Yeah, I'm talking about Lavar.

6 A. No.

7 Q. Okay. And you still feel that way today, or
8 has the night of the removal just completely changed
9 your view of him?

10 A. I feel that I'm a decent judge of character,
11 and it appeared to me that Lavar wanted to be there
12 about as much as we wanted to be there the night of
13 removal.

14 Q. Okay. And you understand CPS is kind of a
15 bureaucratic agency. There is a lot of red tape they
16 have to go through?

17 A. Correct.

18 Q. There is a certain chain of command that has to
19 be followed?

20 A. Correct.

21 Q. They have to operate under a set of policies,
22 rules and procedures that they have to follow?

23 A. Correct.

24 Q. Okay. Can you sympathize for a caseworker with
25 an immense caseload as to why there may have been a

1 lapse in time, granted it may have harmed you and your
2 family; can you sympathize?

3 MR. SLATE: Objection, Your Honor. Assumes
4 facts not in evidence and relevance.

5 THE COURT: What is the relevance of her
6 sympathy?

7 MR. NGUYEN: Well, Judge, I think we all
8 know that they have filed a motion for sanctions against
9 the department, whether or not it's, I guess, the
10 department as a whole or they are filing it to impose
11 sanctions against Mr. Lavar individually. And I'm
12 trying to protect my client in that respect, so that's
13 how I feel that's the relevant portion.

14 THE COURT: Okay. First of all, I think --
15 at least the sanctions that I saw is not asking for
16 anything individually. It's just against the agency.
17 And again, I'm not understanding the relevance as to any
18 of the elements of their motion for sanctions, so the
19 objection is sustained.

20 MR. NGUYEN: I pass the witness, Judge.

21 MR. SLATE: I have no other questions,
22 Judge.

23 MS. PROFFITT: Your Honor, I just wanted to
24 clarify a couple things.

25 **RECROSS-EXAMINATION**

1 **BY MS. PROFFITT:**

2 Q. Ma'am, what was the distance? It was suggested
3 that you could've slept at your own house and gone back
4 and forth to your in-law's home; do you remember that?

5 MR. LONGWORTH: Objection.

6 MR. NGUYEN: I mentioned that the house she
7 was staying at, the minister or whatever home she was
8 living in and staying at in Baytown, not her home, just
9 for clarification. That's what I asked about.

10 THE COURT: Okay. Rephrase.

11 Q. (BY MS. PROFFITT) For the Court's information,
12 what's the distance between your home and the home of
13 your in-laws?

14 A. An hour and 15 minutes to an hour and
15 30 minutes, depending on traffic.

16 Q. Each way?

17 A. Each way.

18 Q. Would that have helped your stress to stay in
19 your own home?

20 A. Yes.

21 Q. Would it have helped your stress to have to
22 drive three hours roundtrip to see your children?

23 A. No.

24 Q. And since CPS came and removed your children,
25 how much time have you spent with your two little ones?

1 A. I saw them for an hour the night they were
2 returned to Deloris, and then I had two, two-hour
3 visits.

4 Q. So five hours with your children since
5 September 19th?

6 A. Yes.

7 Q. Do you think that's in your children's best
8 interest?

9 A. No.

10 Q. You were asked if Lavar treated you with
11 respect. Did his supervisor treat your family with
12 respect?

13 A. I would say indirectly, no; face-to-face, the
14 one time I met with her, yes.

15 Q. Did she follow-up with promises that were made
16 during the family team meeting?

17 A. No.

18 Q. Do you think that's respectful to you and your
19 family?

20 A. No.

21 MS. PROFFITT: Nothing further, Your Honor.

22 MR. NGUYEN: No questions.

23 MR. LONGWORTH: No questions.

24 THE COURT: All right. Thank you.

25 MR. NGUYEN: State calls Lavar Jones.

1 **LAVARVIA JONES,**
2 having been first duly sworn, testified as follows:

3 **DIRECT EXAMINATION**

4 **BY MR. NGUYEN:**

5 Q. Mr. Jones, state your name for the record.

6 A. Lavar Jones.

7 Q. And how long have you worked for the
8 department?

9 A. Going on four years now.

10 Q. Okay. And when was your first contact with the
11 parents in this case?

12 A. July 19th, 2018.

13 Q. And what were the original allegations that
14 were made to you?

15 A. Allegations for physical abuse of Mason Bright
16 by alleged perpetrator Melissa Bright.

17 Q. Okay. And that allegation, was that -- was
18 that based on a physician's statement that you obtained?

19 A. It was based on intake that we received
20 initially when we got the case, and it was a note
21 provided to us from the care team.

22 Q. Okay. From Texas Children's?

23 A. Yes, sir.

24 Q. And you were made aware of the severity of the
25 child's injuries at that time?

1 A. Correct.

2 Q. And these injuries occurred back on July 18th,
3 correct?

4 A. Correct.

5 Q. And when was the emergency -- when was the
6 emergency filed in this case?

7 A. Emergency was filed September 19th, 2018.

8 Q. Okay. So during those months, were efforts
9 made to prevent or eliminate the need to remove the
10 child?

11 A. Yes.

12 Q. What efforts did you make to prevent that?

13 A. When I initially got involved, we did select
14 maternal grandmother as a safety monitor. At that point
15 and upon Mason's discharge, the parental child safety
16 placement was then put in place.

17 Q. Okay. And in the interim, while the children
18 would be with the grandparents, what further efforts
19 would you be making with the parents?

20 A. As far as receiving --

21 Q. To prevent filing a lawsuit in this case. In
22 the interim, while the children were with the
23 grandparents, what else were you doing?

24 A. Well, we had a family team meeting to discuss
25 circumstances regarding the case, the potential

1 placement of the children.

2 Q. Okay. Like, backup placements in the event
3 grandparents didn't work out?

4 A. Well, the -- during the family team meeting was
5 discussed about a potential placement.

6 Q. Okay.

7 A. The Brights expressed that they did want to
8 switch their placement from the Fraziers to the Jesters.

9 Q. Okay. And you -- and you, yourself, you were
10 in favor of having the children placed with the Jesters,
11 correct?

12 A. Yes.

13 Q. Okay. And you and your supervisor were at the
14 family team meeting?

15 A. Correct.

16 Q. On August 14th, 2018?

17 A. Yes.

18 Q. At the Jester's home?

19 A. That's right.

20 Q. And all the parties involved were pleasant to
21 each other?

22 A. Absolutely.

23 Q. So it was a good meeting?

24 A. Yes.

25 Q. Okay. So there was some talk about some text

1 messages between you and Ms. Bright in which, in
2 response to her question about having the children
3 placed with the Jesters, and your response was, "Okay,
4 that should be fine."

5 A. Uh-huh.

6 Q. In your mind, what did you believe that to
7 mean, or what did you -- what were you really trying to
8 convey?

9 A. That there was a possibility, that there was a
10 chance, but I still didn't have a definite at that
11 point.

12 Q. Okay. So it wasn't an unequivocal yes?

13 A. Correct.

14 Q. You still had to await for approval from your
15 supervisor and your program director?

16 A. Correct.

17 Q. And they understood that even in the beginning?

18 A. The Brights? Yes.

19 Q. Okay. And so when -- after you said, "Okay,
20 that should be fine," did Ms. Bright ever call you?

21 A. I believe that there was a phone call
22 thereafter.

23 Q. Okay. Who called who? Did you call her or she
24 call you?

25 A. I can't recall.

1 Q. Okay. What was that phone conversation about?

2 A. It was basically about Mason being discharged
3 from the hospital and that they did pack up some
4 belongings in hopes of taking the child to the Jesters.
5 Then I explained that, at that point, we did not have an
6 approval. We were still waiting on an approval. Mom
7 was upset about the situation, so I had to talk to my
8 supervisor regarding -- just to explain that, at this
9 point, it's not approved.

10 Q. But did you recommend -- did you make a
11 recommendation to your supervisor and program director
12 that, even though it wasn't your decision to make, you
13 made a recommendation that the children be moved to the
14 Jesters?

15 A. I was hopeful again about that.

16 MR. SLATE: Objection, Your Honor.
17 Nonresponsive.

18 THE COURT: That's sustained.

19 Did you make a recommendation?

20 Q. (BY MR. NGUYEN) Did you make a recommendation
21 to your supervisor and your program director that you
22 personally felt that the children should be moved to the
23 Jesters?

24 A. I didn't make a recommendation. I mean, no.

25 Q. Was it ever made known to them that you were --

1 you testified earlier that you were wanting the children
2 to be placed with the Jesters ultimately, correct?

3 A. Correct.

4 Q. Did you ever convey that to your supervisor or
5 program director?

6 A. Not to my program director, but I did ask my
7 supervisor on a continuous basis if we've received an
8 approval so I can let the family know something.

9 Q. That was after the team meeting and after the
10 discharge from the hospital on the 22nd?

11 A. Yes.

12 Q. Okay. And did you get a response?

13 A. At that point, from my supervisor, we had not
14 had an approval yet. We have to wait for an approval,
15 basically.

16 Q. Okay. And the reason why -- what was the
17 reason as to why it took so long to get an answer as to
18 whether or not that placement is going to be approved or
19 not?

20 A. From my understanding, my program director was
21 in training and was made aware about trying to get the
22 family approved.

23 Q. Okay. Now, while -- during that time period,
24 while waiting for the approval on the parental child
25 safety placement with the Jesters, there was an approval

1 for someone by the name of Mary Feathers?

2 A. Yes. Her name sounds familiar.

3 Q. Okay. As a safety monitor. Why was someone
4 approved as a safety monitor and could not be
5 approved -- it was not an approval on the PCSP?

6 A. Okay. Melissa had notified me and just
7 basically said that Ms. Frazier needed some help over
8 the weekend. This was before -- I believe before the
9 family team meeting, I believe. She had expressed
10 getting someone else approved to help Missy for that
11 weekend.

12 Q. Okay. And who approved it?

13 A. My supervisor.

14 Q. Safety monitor doesn't have to be approved by a
15 program director?

16 A. No.

17 Q. But a PCSP does?

18 A. Yes.

19 Q. So what is the process to -- what is the normal
20 process to have a parent child safety placement
21 approved?

22 A. Basically --

23 Q. What has to happen?

24 A. Basically, you run -- you interview the
25 potential caregivers, you run background checks on those

1 individuals, you go out to the residences, you do a home
2 assessment, you contact collaterals. Once that is done,
3 you submit it to the supervisor. Supervisor reviews it
4 and sends it to the program director.

5 Q. Okay. So there is a lot more steps than the
6 PCSP?

7 A. Yes, sir.

8 Q. Okay. And you know -- do you know how many
9 cases your program director would have?

10 MS. PROFFITT: Objection. Relevance, Your
11 Honor.

12 MR. NGUYEN: I'm trying to make an argument
13 as to possibly why it took so long.

14 THE COURT: Reasonableness of CPS's actions
15 is part of the adversary hearing. I'll allow it, if you
16 know.

17 A. I would have to say -- what was the question?

18 Q. (BY MR. NGUYEN) Do you know the amount of
19 caseload that your program director has?

20 A. I would say a lot.

21 Q. And this case, or this parent child safety
22 placement, is not the only one that she has to consider,
23 correct?

24 A. Correct.

25 Q. Safe to say that she has somewhere around

1 500 cases?

2 MR. SLATE: Objection, Your Honor. Assumes
3 facts not in evidence. Leading.

4 THE COURT: Sustained as to leading.

5 Q. (BY MR. NGUYEN) Specifically, you yourself,
6 what's your caseload?

7 A. Caseload is probably about 20, maybe 21,
8 roughly.

9 Q. Okay. Is that normal for investigative
10 caseworkers?

11 A. That's probably normal, if not more.

12 Q. If not more? Okay. Now, on the evening of the
13 removal -- and that took place September 19th, correct?

14 A. Correct.

15 Q. Let me take that back. When do you first find
16 out that -- or when did the parents first put you on
17 notice that they were no longer cooperating with the
18 department?

19 A. Dad on -- me and Dad had a phone conversation
20 August 28th.

21 Q. Okay. And what did the father say to you that
22 day?

23 A. Father said that he expressed that our
24 department had been difficult -- just paraphrasing --
25 and he said that he -- they were no longer going to

1 comply with our department and cooperate with our
2 department.

3 Q. Okay.

4 A. Or the agency.

5 Q. What did you think -- what did you think that
6 meant in your mind?

7 A. No cooperation. No cooperation. Leave me
8 alone. Don't bother us. Don't mess with us.

9 Q. Okay. In your past experience as a caseworker,
10 has there ever been a parent, a CPS parent who's
11 indicated they will no longer cooperate with the
12 department, but that they would keep the child or the
13 PCSP in place and not disrupt that?

14 A. I'm sorry?

15 Q. Have you ever, in your past experience as a
16 caseworker, have you ever encountered a parent who
17 stated to you they are not cooperating with the
18 department, but they have not disrupted the PCSP?

19 A. No.

20 Q. You've never had that happen to you?

21 A. A family to tell me that they wouldn't -- no
22 longer going to cooperate and left their children in the
23 PCSP?

24 Q. Yes.

25 A. No.

1 Q. Have you ever heard that happen by anyone else?

2 A. Can't recall.

3 Q. Okay. So when he told you that, did you feel
4 that he was going to violate the PCSP?

5 A. I did believe that there was some indication.

6 Q. Okay. And why did it take so long for the
7 department to file this petition to remove the children?

8 A. You know, again, when Dad said that he wasn't
9 going to cooperate, I mean, for me, no cooperation is no
10 cooperation. We also had, during that time, a
11 caregiver, a trusted caregiver who was the initial PCSP
12 that we trusted to notify us.

13 MS. PROFFITT: Your Honor, I'm going to
14 object to nonresponsive. He was asked why it took the
15 agency so long.

16 MR. NGUYEN: Well, I think he's explaining
17 he had entrusted the caregiver to -- and he was getting
18 to the point.

19 THE COURT: I think it's a pretty open,
20 broad question, so to the extent that it's going toward
21 answering that question, I'll allow it.

22 A. So, yes, we had a trusted caregiver in place
23 which we trusted during the initial PCSP to let us know
24 and notify us.

25 Q. (BY MR. NGUYEN) Okay. So you put your trust

1 on a PCSP; and during that time period, you got no call
2 from that PCSP, the Fraziers?

3 A. Correct.

4 Q. And in your mind, did you feel the child -- the
5 safety of a child was in jeopardy during that time
6 period?

7 A. I mean -- because during that time period, I
8 didn't have any evidence of facts that that child had
9 been moved.

10 Q. Okay. So that was just an assumption on your
11 part?

12 A. Yes.

13 Q. And you had no other reason to believe
14 otherwise?

15 A. Otherwise.

16 Q. Meaning that the Fraziers were going to violate
17 the PCSP and just hand the children over?

18 A. I mean -- correct.

19 Q. Okay. And because you didn't get a phone
20 call -- I take that back. So during the conversations
21 that you've had with Mr. Bright, was there -- did you
22 feel like there was any kind of animosity between the
23 two of you, like when you two were speaking to each
24 other?

25 A. On the 28th, yes. On August 28th.

1 Q. And this was a phone conversation?

2 A. Correct.

3 Q. Not a text message?

4 A. No.

5 Q. Okay. Was he yelling at you?

6 A. He was aggressive.

7 Q. Okay. I mean --

8 A. In an aggressive tone.

9 Q. Okay. Like, shouting or was he just stern?

10 A. Combination of both.

11 Q. Okay. And he's a pretty big guy?

12 A. He's a big guy.

13 Q. And when the decision was made to have the
14 children removed from their home, were you concerned for
15 your own safety and well-being?

16 A. Yes.

17 Q. Okay. And when you -- on the evening that the
18 children were removed, at what time did you actually
19 arrive at the house?

20 A. I actually arrived at the residence probably
21 about 7ish, 7:15, 7:20, 7:30.

22 Q. Okay. And at what point did you finally make a
23 decision to knock on the door and get in contact with
24 the parents?

25 A. After I had waited on law enforcement for at

1 least two hours.

2 Q. Okay. So you were waiting for law enforcement?

3 A. Yes.

4 Q. But it got to the point in time of the evening
5 that you just couldn't wait any longer; you took your
6 chances?

7 MS. PROFFITT: Objection. Leading, Your
8 Honor.

9 THE COURT: That's sustained.

10 Q. (BY MR. NGUYEN) Why did you make the decision
11 to -- if you were so concerned for your safety, then why
12 did you make the decision to get in contact with the
13 parents prior to law enforcement arriving?

14 A. I called dispatch back on several occasions.
15 They knew the make and model of my vehicle. They knew
16 what residence I was going to. And the time was far
17 long spent, so I made a decision at that point to go
18 into -- knock on the door of the residence.

19 Q. Okay. And the actual removal of children from
20 the parents' home is probably the worst part of your
21 job, isn't it?

22 THE COURT: Please stop with the leading.

23 MR. NGUYEN: I'm sorry?

24 THE COURT: Stop with the leading.

25 Q. (BY MR. NGUYEN) Have you -- in your prior

1 experience with CPS as a whole, have you had bad
2 experiences with CPS parents when removing their
3 children from them?

4 A. Yes.

5 Q. Has any of them resulted in violence or close
6 to it?

7 A. Yes.

8 Q. Okay. Were you afraid that could potentially
9 happen in the Bright's home at that time?

10 A. Yes, sir. There is always a chance.

11 Q. Okay. Now, do you feel that looking back at
12 things in this case you could've or would've done
13 differently?

14 A. Yes, sir.

15 Q. And what is that exactly?

16 A. I would've reengaged the parents sooner or
17 contacted Missy myself, yes.

18 Q. Okay. So you're saying you weren't as diligent
19 in maintaining contact with the family as much as you
20 should have?

21 A. As I could have.

22 Q. As you could have? You think your 21 caseload
23 has anything to do with that?

24 A. Sure.

25 Q. In what respect?

1 A. We average anywhere from three to maybe five
2 cases sometimes a week. And P-1, Priority 1's, we have
3 24 hours to contact; P-2, 72 hours to contact, so we
4 have some due diligence that we have to do regarding
5 those cases.

6 Q. Okay. And in your mind, during that 22-day
7 period, did you think the child was in danger?

8 A. No.

9 Q. Okay. So did you have to prioritize some cases
10 in which there was imminent danger as opposed to those
11 in which there was not?

12 A. I mean, each case is treated case by case.
13 Different circumstances, different situations that may
14 take a little bit more time than others.

15 Q. Okay. But you weren't trying to avoid the
16 Brights or anything like that?

17 A. No, sir.

18 Q. What else do you think you could've done
19 differently?

20 A. Can't think of anything offhand right now.

21 Q. Do you believe there were mistakes made in this
22 case or that this case could've been handled better?

23 A. I believe there were, yes, some mistakes.

24 Q. On your part?

25 A. Yes.

1 Q. And you're here before the Court; you're owning
2 up to your mistakes?

3 A. Yes.

4 Q. What -- can you state what mistakes those were?

5 A. Not reengaging the family a lot sooner from
6 when Dad did express, "I'm no longer going to cooperate
7 with the agency." At that point, I should've called
8 Missy and touched base with her.

9 Q. And throughout the entire process, you were
10 supportive of having the children placed with the
11 Jesters?

12 A. Yes.

13 Q. And you maintained a very good, healthy
14 relationship with the parents throughout the process?

15 A. Yes.

16 Q. Right?

17 A. Correct.

18 Q. Is there anything else that you wanted to say
19 either directly to the parents or to the Court?

20 A. No.

21 MR. NGUYEN: Pass the witness, Judge.

22 THE COURT: All right. My guess is we're
23 not going to finish cross in the next five minutes.
24 Let's go ahead and take a break, and I'd like to try and
25 start right at 1:45. Thank you.

1 (Brief recess)

2 MR. SLATE: Judge, in an abundance of
3 caution because some of the testimony that's already
4 been provided compared to some of the sworn testimony in
5 the affidavit and also some of the recordings we have, I
6 would ask the Court to give a Miranda warning to
7 Mr. Jones just to ensure that he fully understands his
8 rights as he testifies here today and also -- and the
9 potential rights he may have to not give answers under
10 sworn testimony.

11 THE COURT: All right.

12 Do you understand that -- obviously, that
13 you're under oath, and you understand that you have a
14 right to remain silent. That is a right in a criminal
15 case to remain silent and not have your silence held
16 against you. Although you have that right to remain
17 silent in this court, this could be used against you in
18 this manner or against the agency that is part of the
19 sanctions. If you do decide to testify, anything that
20 you say could be used against you in this court or in
21 another court. Do you understand that?

22 THE WITNESS: Yes, sir.

23 THE COURT: All right.

24 **CROSS-EXAMINATION**

25 **BY MR. SLATE:**

1 Q. Can you give me your full name, sir?

2 A. Full name is Lavarvia Jones.

3 Q. And you said before that you've been working
4 for the Texas Department of Family and Protective
5 Services for four years?

6 A. Yes, sir, going on four years.

7 Q. And what -- how long have you been in the role
8 as an investigator?

9 A. All four years.

10 Q. I can barely hear you.

11 A. All four years.

12 Q. And so how many times have you -- give an
13 estimation of how many times you think you've put
14 together a removal affidavit?

15 A. I would roughly say eight, nine, perhaps.

16 Q. Eight or nine?

17 A. Roughly.

18 Q. In four years, you've only put together eight
19 or nine?

20 A. Roundabout, yes, sir, that I can recall.

21 Q. And so as an investigator, are you not putting
22 together cases to remove people's children?

23 A. Can you repeat that?

24 Q. Over the four years, you've only had eight or
25 nine times that you've put an investigation together to

1 remove someone's child?

2 A. Okay, so my understanding of the question to me
3 is my four years being here, how many times have I
4 prepared an affidavit; is that correct?

5 Q. How many times have you sworn yourself to an
6 affidavit?

7 A. Don't know.

8 Q. Give me an estimation?

9 A. When you say "sworn," you mean the signature
10 that I've signed on the affidavit?

11 Q. Sir, I'm going to show you what's already been
12 entered into evidence as Exhibit 1. This is page 11 of
13 that exhibit. Do you see that on the screen in front of
14 you?

15 A. Yes.

16 Q. Do you see down there where you've got your --
17 do you see that signature on the bottom of that
18 affidavit?

19 A. Yes.

20 Q. You see that part that says: "Signed under
21 oath before me on the 19th of September, 2018"?

22 A. Yes, sir.

23 Q. Okay. Did you know that when you make these
24 affidavits, you are swearing to the contents of the
25 affidavit under oath of penalty of perjury?

1 A. Yes.

2 Q. Do you know what "under oath and penalty of
3 perjury" means?

4 A. Explain.

5 Q. I'm asking: Do you know what it means, yes or
6 no?

7 A. Well, "perjury" is when you state something and
8 then go back on what you said, basically.

9 Q. That's your understanding of what perjury is?

10 A. Yes.

11 Q. So do you understand that you have to tell the
12 truth when you make an affidavit?

13 A. Correct.

14 Q. You understand that there is a penalty if you
15 do not tell the truth?

16 A. Correct.

17 Q. What is that penalty, to your understanding?

18 A. I guess it would be jail time.

19 Q. So you also understand that when you come and
20 the judge swears you in and you raise your right hand,
21 that oath is the same that you give when you make the
22 affidavit?

23 A. Yes.

24 Q. You understand that when you came in here for
25 this emergency hearing, ex parte hearing, that you also

1 took an oath on that day?

2 A. Yes.

3 Q. Okay. And the testimony you gave that day was
4 also under oath?

5 A. Yes.

6 Q. Let me ask you this: Off of the top of your
7 head, can you think of any inconsistencies between the
8 testimony you've given today, what you stated in your
9 affidavit, and the testimony you gave that day that you
10 came up here on the ex parte hearing on September 19th?
11 Can you think of any inconsistencies between those three
12 periods -- or those three occasions you gave sworn
13 testimony in this case?

14 MR. NGUYEN: Your Honor, I'm going to
15 object. My client's going to assert the Fifth.

16 MR. SLATE: Judge, he cannot assert the
17 Fifth for another person.

18 THE COURT: Yeah, that has to be asserted
19 by the witness if he wants.

20 A. Plead the Fifth.

21 Q. (BY MR. SLATE) You plead the Fifth to that
22 question?

23 A. Yes.

24 Q. You understand that the Judge can infer from
25 your testimony of taking the Fifth Amendment in this

1 civil case, that that means that you -- there were
2 inconsistencies?

3 MR. NGUYEN: Objection. Your Honor, the
4 Court's already admonished the witness regarding his
5 Fifth Amendment rights.

6 THE COURT: I don't think that's an
7 admonishment, as in a statement; that's a question.

8 A. What was the question?

9 MR. NGUYEN: Objection. Assumes that there
10 are inconsistencies to begin with.

11 MR. SLATE: He just took the Fifth.

12 THE COURT: That's overruled. The question
13 was just: Do you understand the judge can infer that
14 there were inconsistencies?

15 THE WITNESS: And "infer" means?

16 THE COURT: I don't think that I can
17 instruct you with anything other than just the plain
18 meaning of "infer": Deduce, draw a conclusion from.

19 Q. (BY MR. SLATE) Do you understand that by
20 taking the Fifth Amendment to that question, that you
21 have inconsistencies in your testimony and your
22 affidavit, that the Court can then consider that, yes,
23 you do have those inconsistencies and that's why you're
24 taking the Fifth?

25 A. Not true.

1 Q. Well, then -- but you just took the Fifth
2 because you didn't want to answer that question.

3 MR. NGUYEN: Objection. Argumentative.

4 THE COURT: It's overruled.

5 Q. (BY MR. SLATE) You just took the Fifth because
6 you didn't want to answer that question, right?

7 A. Correct.

8 Q. Are there any times in your affidavit that you
9 did not tell the truth in what was sworn to and
10 presented to this court?

11 A. No, sir.

12 Q. In the affidavit?

13 A. No, sir.

14 Q. Are there any times in your sworn testimony at
15 the emergency removal hearing, the ex parte hearing,
16 that the testimony you provided was not the truth?

17 A. That day I swore to tell the truth, yes.

18 Q. That's not what I asked you, sir. Was there
19 any testimony that you provided that was not the truth
20 on September 19th?

21 A. No.

22 Q. Has any testimony you've provided today been
23 not the truth?

24 A. No.

25 Q. When you put into your sworn affidavit here

1 that there is no evidence of any hematology injury --
2 issues that would explain the second injury. What did
3 you mean?

4 A. I mean what it says in the affidavit.

5 MR. SLATE: Objection. Nonresponsive,
6 Judge.

7 MR. NGUYEN: That's responsive to his
8 question.

9 THE COURT: That's sustained.
10 Listen to the question, please.

11 Q. (BY MR. SLATE) What did you mean when you
12 said: "There are no hematology issues"?

13 A. What I meant there was hematology issues as far
14 as what the parents were saying was Von Willebrand. We
15 had no information saying that this -- that that was the
16 case. And once we spoke to the individual for the CAPs
17 team, we were informed that there were no issues with
18 hematology.

19 Q. So you're saying that you had never been
20 provided the information or any records that showed you
21 this child had Von Willebrand?

22 A. I had been provided the records; but I'm not a
23 doctor, so I can't read this.

24 Q. And what records had you been provided?

25 A. Well, the parents did give me -- had given me

1 something from Texas Children's.

2 Q. When?

3 A. I can't recall exactly when.

4 Q. Was it at the family team meeting?

5 A. Maybe.

6 Q. They gave you what we've got admitted into
7 evidence as Exhibit No. 3. They gave you this, right,
8 what you're looking at on page 5 on Exhibit 3?

9 A. Something to this nature.

10 Q. Well, they gave you exactly this, right?

11 A. No.

12 Q. Okay. And down there at the bottom, I want you
13 the read down there where it starts with the -- I'll put
14 the little laser on it -- it starts with: "These data."
15 Read that for me.

16 A. "These data suggest Von Willebrand disease
17 Type 1."

18 Q. Keep reading.

19 MR. NGUYEN: Objection, Your Honor. This
20 assumes that the caseworker knows what Von Willebrand
21 is.

22 THE COURT: No, I don't think so. I think
23 he was just asking to read what it says in the -- what's
24 already in evidence.

25 Go ahead.

1 Q. (BY MR. SLATE) Keep reading here at the top of
2 the next page.

3 A. "A risk for bleeding. Since the low detectable
4 ranges of Von Willebrand." Make it big again. Can't
5 see it.

6 Q. I just want to look so we can look at those two
7 pages together. You said a second ago, you can't
8 understand medical records, right?

9 A. Correct.

10 Q. Okay. And so this part right here where it
11 says: "The patient carries a risk for bleeding," were
12 you able to understand that part?

13 A. Yes.

14 Q. Okay. So when you go and write into a sworn
15 affidavit that there is no hematology issues for this
16 child, is that the truth?

17 A. Well, based from what we received from our --
18 MS. PROFFITT: Objection. Nonresponsive,
19 Your Honor. It's a yes or no question.

20 THE COURT: Yes or no question.

21 A. Repeat the question.

22 Q. (BY MR. SLATE) When you write in a sworn
23 affidavit there were no hematology issues, and yet you
24 can clearly read that sentence and understand it, were
25 you telling the truth in your sworn affidavit?

1 A. Yes.

2 Q. How?

3 A. Because, again, we spoke to our abuse team and
4 they told us that there were no hematology issues.

5 Q. Sir, tell me the name of the doctor you spoke
6 to?

7 A. I hadn't spoke to anyone.

8 Q. You didn't talk to a doctor?

9 A. No, sir.

10 Q. And so you're saying you can't interpret
11 medical records; a doctor would need to. That's what
12 you said a minute ago, right, that you're not a doctor?

13 A. I'm not a doctor.

14 Q. But you didn't go speak to a doctor?

15 A. No.

16 Q. Do you think that you were doing your due
17 diligence before you took away these people's children?

18 A. Yes.

19 Q. You don't think you needed to go and talk to a
20 doctor?

21 A. Well, I spoke to the social worker who is part
22 of the abuse team that consults with the doctor.

23 Q. And so when you -- when you go off and sign
24 your name to a sworn affidavit, do you feel any duty to
25 make sure that your putting the correct information in

1 front of a judge?

2 A. Yes.

3 Q. Okay. And so you're saying that what you did
4 to give this judge in this court correct information
5 before you removed some people's children was to talk to
6 a social worker?

7 A. Who was a part of the child abuse team, yes.

8 MR. SLATE: Objection. Nonresponsive.

9 THE COURT: Yeah, listen to the question.

10 Q. (BY MR. SLATE) You're saying your due
11 diligence, when you put forth an affidavit under oath
12 that said this child had no hematology issues, that your
13 due diligence included talking to a social worker?

14 A. Yes.

15 Q. When you get a cold, do you go see a social
16 worker?

17 MR. NGUYEN: Objection. Argumentative and
18 relevance.

19 THE COURT: It's overruled.

20 A. When I get a cold?

21 Q. (BY MR. SLATE) Right. You go see a social
22 worker?

23 A. I'm going to Walgreens.

24 Q. Let's say you come down with pneumonia, you go
25 see a social worker?

1 MR. NGUYEN: Objection. Argumentative and
2 relevance.

3 THE COURT: That's overruled.

4 A. If I get pneumonia? I go see a doctor.

5 Q. (BY MR. SLATE) Because that's the people who
6 deal with medicine, right?

7 A. Uh-huh.

8 Q. Right? You know that, right?

9 A. Yes.

10 Q. And yet that's not what you afforded the
11 Brights before you went and came down here and removed
12 their children, right?

13 A. I consulted with the social worker who's a part
14 of the child abuse team.

15 Q. What did you do to make sure that that social
16 worker knew about the Von Willebrand?

17 A. That social worker was well aware of the Von
18 Willebrand.

19 Q. Did you provide her a copy of the records that
20 you were given?

21 A. She had the records.

22 MR. SLATE: Objection. Nonresponsive.

23 THE COURT: Please listen to the question.

24 Q. (BY MR. SLATE) Did you provide her with a copy
25 of the records that you were given?

1 A. No.

2 Q. Why?

3 A. Because I trusted her and what she told us
4 based on information from the doctors.

5 Q. Now, today, you were asked what could you have
6 done better in this case, right?

7 A. Yes.

8 Q. And the only thing you listed was "not reengage
9 the family sooner," right?

10 A. Yes, sir.

11 Q. So you believe, as you sit here right now, that
12 CPS did its job in regards to getting medical evidence
13 and proof together to bring to this court by just
14 talking to the social worker?

15 A. Yes, sir.

16 Q. You think that by just talking to a social
17 worker that you had a full understanding, and this
18 court, therefore, had a full understanding of the
19 medical issues regarding Mason Bright?

20 A. I mean, we were provided a physician's
21 statement. We were -- again, we consulted with
22 Ms. Russell.

23 Q. Where is this physician's statement?

24 A. My attorney has it.

25 Q. Well, let's look here. You attach here in your

1 affidavit -- you mentioned that there is a -- I'm
2 looking on page 7 of Exhibit 1. You say right here in
3 this paragraph that "attached to the petition being
4 filed as Exhibit 1 is a copy of the physician's
5 statement," right?

6 A. Yes.

7 Q. Okay. And what is attached as Exhibit 1 is --
8 I'm going to show you page 12 of that document. That's
9 Exhibit 1, right?

10 A. Okay.

11 Q. Am I correct?

12 A. Yes.

13 Q. Okay. So this is what you attached as a
14 physician's statement, right?

15 A. From my knowledge, that was a physician's
16 statement.

17 Q. What we're looking at right here is a
18 physician's statement to you?

19 A. Yes, sir.

20 Q. Where did a doctor sign off on it saying that
21 they affirm this was a true diagnosis?

22 A. I don't see anything on this particular page.

23 Q. How about page 14?

24 A. No.

25 Q. How about page 15?

1 A. No.

2 Q. Page 16?

3 A. No, sir.

4 Q. Page 17?

5 A. No.

6 Q. Page 18?

7 A. I do not --

8 Q. Page 19?

9 A. No, sir.

10 Q. Page 20?

11 A. No.

12 Q. Okay. So, again, where in that document was
13 this thing signed off on by a physician?

14 A. And I was not aware that it had to be signed by
15 a doctor to be a physician's statement.

16 Q. How many times have you ever had to get a
17 physician's statement?

18 A. Probably a few times.

19 Q. You've never gotten them with doctor's
20 signatures on them?

21 A. That was not the focus of the statement was to
22 look for signatures; it was to read.

23 Q. Even the records that you attached are dated --
24 the last date on them is this one right here for
25 Dr. Sarpong on July 20th, 2018, right?

1 A. Yes.

2 Q. Okay. We know from those medical records we
3 just looked at over here on Exhibit 3 that the results
4 for the hematology test came in on July 24th, 2018,
5 right?

6 A. Yes.

7 Q. So that's basic investigative technique, right,
8 to look at the dates as stuff came in, right? You
9 would've known that when you came and filed your
10 affidavit, wouldn't you?

11 A. What was the first question?

12 Q. I said it was basic investigative technique to
13 look at dates, right?

14 A. Yes.

15 Q. You would've done that before you came in here
16 and filed for an affidavit removing these people's kids,
17 right?

18 A. Yes.

19 Q. So you knew that what you had -- those medical
20 records were done before hematology results came in?

21 A. No.

22 Q. You just said basic investigative technique
23 would've been to look at dates, and you would've done
24 that before you came in here?

25 A. Yes.

1 Q. So you knew hematology came in after the stuff
2 that you provided on the back of your affidavit, right?

3 A. No.

4 Q. Why?

5 A. I mean, because what I provided on my affidavit
6 is what I thought to be the physician's statement.

7 Q. Sir, the records you provide on the back of the
8 affidavit are dated what?

9 A. I see the 24th, correct.

10 Q. They are dated the 20th?

11 A. Well, from this exhibit, it says 24th.

12 Q. This is what you -- look on Exhibit 1, sir.

13 This is what you attached to the affidavit.

14 A. Okay.

15 Q. That's not dated the 24th, is it?

16 A. No.

17 Q. It's not dated the 24th anywhere on it, is it?

18 A. No.

19 Q. Are you -- are you saying right now you didn't
20 do basic investigative technique to look at these dates,
21 or you did before you came down here with this
22 affidavit, with your affidavit to take these kids away?

23 A. I would say I did. Perhaps, I missed some of
24 the dates. Like I said, what I thought what I was
25 attaching was the physician's statement.

1 Q. Sir, you're attaching records that you think
2 are a physician's statement which go through and talk
3 about there being blood injuries, right, and there being
4 no explanation for those for blood in the brain, right?

5 A. Yes.

6 Q. Which you then turn around and put into your
7 affidavit to this court that this child has unexplained
8 bleeding in the brain, right?

9 A. Yes.

10 Q. And yet you were given records that clearly
11 show they were done after your supposed physician's
12 statement saying there is an explanation for blood?

13 A. Well, again, according to our CAPs team, there
14 was no explanation for the hematology --

15 Q. Well, you heard the doctor get up here
16 yesterday, right?

17 A. I did.

18 Q. And you heard him say there absolutely is a
19 hematology explanation for the blood, right?

20 A. Yes.

21 Q. And he says no one ever contacted him and asked
22 him about it after July 19th?

23 A. Right.

24 Q. Did that surprise you that he said that?

25 A. No.

1 Q. Because you knew no one had contacted him?

2 A. Correct.

3 Q. And yet he's the guy that you're saying is the
4 physician that signed off on this case, right?

5 A. What you mean "signed off on this case"?

6 Q. You just said your physician's statement is
7 this document that we're looking at?

8 A. Yes.

9 Q. "Attestation signed by Sarpong, Kwabena,"
10 right?

11 A. Yes.

12 Q. And so that guy who you're now relying on just
13 told us yesterday hematology explains the bleeding.

14 MR. LONGWORTH: Objection, Your Honor.

15 That misstates the facts. The doctor said that could
16 account for some of it but not all of it.

17 MR. SLATE: That's not what he said, Judge.

18 MR. LONGWORTH: I disagree, Your Honor.

19 (Attorneys talking simultaneously)

20 THE COURT: Well, I took that as a question
21 and he can agree or disagree with it, that he believes
22 that that's what the statement was.

23 The question was: "So that guy you're now
24 relying on just told us yesterday that hematology
25 explains the bleeding," if I stated the question

1 correctly. Is that your understanding or not?

2 A. That's what it sounds like he was saying.

3 Q. (BY MR. SLATE) So do you think that you did
4 your due diligence in reporting to the Court the nature
5 of the bleeding?

6 MR. NGUYEN: Objection. That assumes that
7 he was an expert at that moment, and he's not qualified
8 to be testifying to the bleeding.

9 THE COURT: I think -- if I understand the
10 question was -- he's asking this witness about due
11 diligence and whether he believes he did due diligence
12 in his telling -- in reporting to the Court the nature
13 of the bleeding; is that correct? In other words, did
14 he --

15 MR. SLATE: Yes, Your Honor.

16 THE COURT: Does that make sense?

17 THE WITNESS: Yes, sir.

18 Q. (BY MR. SLATE) Do you believe you did your due
19 diligence in reporting to this court in a sworn
20 affidavit asking the Court to remove these people's
21 children with what you did regarding the blood in the
22 child's brain?

23 A. Based on my conversation with the social
24 worker, yes.

25 Q. When did you have the conversation with the

1 social worker?

2 A. There was several occasions. I cannot recall
3 the dates right off.

4 Q. When was the last one?

5 A. Last one was on September 19th.

6 Q. As you were down here putting your affidavit
7 together?

8 A. Yes.

9 Q. Did you ask the social worker to go and run it
10 by the doctor one more time?

11 A. We asked her to look through the doctor's
12 notes.

13 MR. SLATE: Objection. Nonresponsive.

14 THE COURT: Yes or no, did you ask?

15 A. To run it by the doctor?

16 Q. (BY MR. SLATE) Did you ask the social worker
17 to go and run the facts by the doctor one more time
18 before you filed your affidavit?

19 A. No.

20 Q. Do you think that would be a better practice
21 than just relying on a social worker?

22 A. No.

23 Q. Do you understand the magnitude of someone
24 removing someone's children from them?

25 A. Yes.

1 Q. What is it?

2 A. The magnitude?

3 Q. What is it? Why is it? What is the magnitude?

4 Why is it important?

5 A. To remove?

6 Q. Yes.

7 A. The magnitude is if that child is in danger.

8 Q. But do you understand the protections that
9 people have to raise their children without governmental
10 interference?

11 MR. LONGWORTH: Objection. Relevance.

12 MR. NGUYEN: -- a legal conclusion. Is
13 he's talking about protection as in constitutional
14 protections?

15 THE COURT: I think his question is: Do
16 you understand that? If he doesn't understand that, he
17 can answer. He can answer either way.

18 Do you understand the protections that
19 people have to raise their children without governmental
20 interference?

21 A. You mean as far as their rights? Do you mean
22 as far as rights?

23 THE COURT: Counsel?

24 A. Do you mean as far as their rights?

25 Q. (BY MR. SLATE) Yeah.

1 A. Do I understand? Yeah, I do understand there
2 are certain rights.

3 Q. What are they that you understand?

4 A. I mean, Fourth Amendment rights. There are
5 different rights that individuals have.

6 Q. Do you understand it's a constitutional right
7 for a parent to raise their child without the government
8 coming and interfering?

9 MR. NGUYEN: Objection. Calls for a legal
10 conclusion.

11 THE COURT: Overruled. He's asking: Do
12 you understand?

13 A. Give me your question again.

14 Q. (BY MR. SLATE) Do you understand that parents
15 have a constitutional right to raise their children
16 without government interference?

17 A. No.

18 Q. Do you understand that you work for the
19 government?

20 A. I do.

21 Q. Do you understand that when you come and take
22 someone's kids, you impair their constitutional rights?

23 MR. NGUYEN: Objection. Calls for a legal
24 conclusion.

25 THE COURT: That's overruled.

1 A. How would it impair their rights?

2 Q. (BY MR. SLATE) Because they have a right to
3 raise their kids without you coming and taking them.

4 MR. NGUYEN: Objection, Your Honor. That's
5 not a question.

6 Q. (BY MR. SLATE) Do you understand?

7 THE COURT: That's sustained.

8 Q. (BY MR. SLATE) Is your answer that you don't
9 understand that when you come and take their kids, that
10 you're impairing their constitutional rights?

11 A. I understand that they have rights; but as a
12 worker, we do have procedures and we --

13 Q. So you don't really understand that it's a big
14 deal to come down and take their rights; is that what
15 you're saying? Come down and take someone's kids away
16 from them. You don't understand the magnitude?

17 A. Yes.

18 Q. Well, you're saying that all you got to do is
19 talk to a social worker on a medical case, don't care
20 whether or not they talk to a doctor, right?

21 A. I didn't say that.

22 Q. You don't think you need to sit here and look
23 at records and date whether or not records are brought
24 in on one day or another day, right?

25 A. I'm not saying that.

1 Q. What are you saying, sir?

2 A. I believe it is important.

3 Q. So if it's real important before the government
4 comes and removes people's children from them against
5 their constitutional rights, why aren't you doing a
6 little more effort and work before you do it?

7 A. Well, I mean, to the best of my knowledge, I've
8 done the best of my ability.

9 Q. This case is the best of your ability? This
10 case, the Bright case?

11 A. Yes.

12 Q. We can look at this case and think this is
13 Lavar Jones at his best?

14 A. I mean, there are some things I could've done
15 better, correct.

16 Q. The only thing you listed that you could've
17 done better was to reengage the family sooner?

18 A. Yes.

19 Q. Otherwise, nothing else was wrong with what
20 Lavar Jones did in this case, right?

21 A. I'm not -- I mean, with the dates -- yes, sir.

22 Q. Sir, you testified under oath when Mr. Nguyen
23 asked you questions a minute ago, that that was the only
24 thing that was a mistake you made in this case, right?

25 A. That I could recall.

1 Q. Are there other ones that you can recall now?

2 A. No, sir.

3 Q. You said a minute -- you also said, right after
4 that question that Mr. Nguyen asked you, that you had a
5 good and healthy relationship with the Bright family; do
6 you remember saying that?

7 A. Yes.

8 Q. And yet that good and healthy relationship, you
9 said you were afraid of the Brights; is that what you
10 said?

11 A. At some point, yes.

12 Q. When did you become afraid of them?

13 A. Well, Dad's aggression on the 28th of August
14 when I spoke to him about not cooperating, Dad -- his
15 tone was aggressive.

16 Q. So that's when you became afraid?

17 A. I don't know if I would use the word "afraid,"
18 but.

19 Q. So what were you afraid of exactly?

20 A. Can you be more specific?

21 Q. I'm saying you had a phone call with Mr. Bright
22 on the 28th. You're saying you now became afraid?

23 A. I wouldn't say "afraid," but there was some
24 aggression which was some cause for some concerns, yes.

25 Q. What was the concern?

1 A. I mean, that -- I mean, not only anything
2 verbally, could be possible even, perhaps, physically.

3 Q. When would this physical happen?

4 A. I don't know.

5 Q. And so is that why you completely disengaged
6 from the family and didn't engage them for 22 days?

7 A. Well, when the family --

8 MR. SLATE: Objection. Nonresponsive.

9 THE COURT: It is a yes or no question.

10 A. Repeat the question.

11 Q. (BY MR. SLATE) Because of this aggression and
12 because of you being afraid, is that why you disengaged
13 the family for 22 days?

14 A. I wouldn't say being afraid, but to some
15 degree.

16 Q. You have a system at TDFPS called "Impact,"
17 right?

18 A. Correct.

19 Q. Are there any Impact notes where you noted your
20 fear of the Brights on August 28th?

21 A. No.

22 Q. And you know that I've sent you and the agency
23 and each of the people involved in this case what's
24 known as a spoliation notice. You received that, right?

25 A. Yes, sir.

1 Q. And the spoliation notice told you not to make
2 any changes to any Impact reports, right?

3 A. Correct.

4 Q. Did you make any since we sent you that notice?

5 A. No.

6 Q. So when we get those Impact notes, we pull them
7 and look at them, are there going to be any entries that
8 talk about how afraid you were of Dillon Bright to alert
9 anyone else who might take over this case or be involved
10 in this case, the aggressions that you were afraid of?

11 A. No, sir.

12 Q. Why?

13 A. You asked me did I go back?

14 Q. Are there any in there? Did you put one in
15 there on August 28th?

16 A. I documented August 28th, but, no, I did not
17 specify about being fearful, as you say.

18 Q. What does the August 28th entry say?

19 A. Says that Dad didn't want to cooperate with our
20 agency.

21 Q. That's all it says?

22 A. Dad expressed in the beginning about the
23 hardship, about not being satisfied with the change of
24 the PCSP and he was no longer going to cooperate.

25 Q. What did you take that to mean?

1 A. Leave me alone. I don't want to be bothered.

2 Q. You staffed it with your supervisor, right?

3 A. Uh-huh.

4 Q. Several times, you said, right?

5 A. Yes.

6 Q. Each time, were you just saying he doesn't want
7 to be bothered?

8 A. No.

9 Q. What were you saying?

10 A. I mean, basically, I should've reengaged them.

11 MR. SLATE: Objection, Your Honor.

12 Nonresponsive.

13 THE COURT: The question was: What were
14 you saying?

15 MR. SLATE: To his supervisor in his
16 staffing, Judge.

17 THE COURT: All right.

18 Just listen to the question.

19 Q. (BY MR. SLATE) In the several staffings that
20 you had with your supervisor after August 28th, what
21 were you saying to her each time you brought up the
22 Bright case?

23 A. That Mr. Bright informed us that he was no
24 longer going to cooperate with the agency.

25 Q. And what is your -- you and your supervisor's

1 standard operating procedure for people who tell you
2 they are no longer going to cooperate with the agency?

3 A. Reengage, try to reengage the family.

4 Q. When?

5 A. I mean --

6 MR. NGUYEN: Objection. Vague, Your Honor.
7 He asked what the normal procedure was -- first
8 question -- and then he asked when. I don't quite
9 follow that.

10 THE COURT: You mean when in this case or
11 when in general do they --

12 MR. SLATE: I'm still on the standard
13 operating, Judge. Just when? When is the standard for
14 them to reengage?

15 Q. (BY MR. SLATE) What is the standard for you to
16 reengage?

17 A. Typically, you would want to try to do it
18 immediately.

19 Q. So you broke the standard procedure in this
20 case?

21 A. And I said that earlier, that I could've done
22 it better.

23 Q. So the answer is, yes, you broke the standard?

24 A. Yes.

25 Q. Did -- what was the reason for coming down here

1 on September 19th seeking emergency removal of the
2 children?

3 A. The reason? Because at that point, I found out
4 that the children were back at the Bright's residence,
5 violation of a parental child safety placement in which,
6 at that point, I did notify my supervisor.

7 Q. You said you had already notified her back on
8 August 28th when you were first told that the Brights
9 were no longer going to comply with the PCSP, right?

10 MR. NGUYEN: Objection, Your Honor. I
11 think that mischaracterizes testimony. He said that the
12 father would not cooperate with the department, not that
13 the children were returned back home.

14 THE COURT: The question was whether he
15 said it or not, and he can answer, yes, he said it; no,
16 he didn't say it; I don't remember. But suggesting that
17 anyone is asking a question that misstates something is
18 not necessarily a proper objection, so that's overruled.

19 Please answer.

20 A. Okay. I'm sorry, can you repeat that?

21 Q. (BY MR. SLATE) You've already told us that you
22 told your supervisor back on August 28th when Mr. Bright
23 said he was no longer going to comply with the PCSP?

24 A. Yes.

25 Q. So why are you just now staffing it on

1 September 19th with her?

2 A. Well, I mean, on the 18th, I did reach out to
3 Melissa just so see how they were doing, how things were
4 going, to try to reengage. And that's -- at that point,
5 that's when I found out that the children were back in
6 their residence.

7 Q. Where did you think the kids had been up until
8 that day?

9 A. Perhaps, maybe, still with Missy.

10 Q. What do you mean "perhaps"?

11 A. Possibility.

12 Q. What's the other possibility?

13 A. That they could've returned home.

14 Q. So you're saying you weren't sure that they're
15 at Missy Frazier's house from August 28th through
16 September 18th?

17 A. I had no -- at that point, I didn't know that
18 they were back in the Bright's residence.

19 Q. Sir?

20 A. I didn't know that.

21 Q. When you came up here and testified under oath
22 on September 19th in front of Brian Fisher sitting in
23 place of Judge Schneider, did you or did you not testify
24 that the current placement, the Fraziers, were no longer
25 interested in keeping the kids?

1 A. No.

2 Q. That's not in the record?

3 A. I didn't say that.

4 Q. What did you say?

5 A. I never said that they were -- I don't recall
6 saying that.

7 Q. You might have said it?

8 A. The Fraziers never told me that.

9 Q. That's not what I asked you, sir. You might
10 have said it?

11 A. No, I didn't say it.

12 MR. NGUYEN: Objection. Argumentative.

13 THE COURT: Overruled.

14 Q. (BY MR. SLATE) What did you tell the Court in
15 regards to the current PCSP where you thought the
16 children were; why they couldn't just stay there?

17 A. I plead the Fifth.

18 Q. Now, you testified you did not tell Mr. Bright
19 or Mrs. Bright about you coming down here to court on
20 September 19th, right?

21 A. Correct.

22 Q. And you've heard your own voice on the tape
23 yesterday explaining why you didn't do that?

24 A. Yes.

25 Q. In your own voice, you said, one, because of

1 disgruntledness, right?

2 A. Yes.

3 Q. What's that mean?

4 A. That means unhappy. That means unpleasant.

5 Q. So what was going to be unhappy or unpleasant?

6 A. The Brights.

7 Q. So that's a reason for you to come down here
8 and seek removal of their children without telling them
9 because they might be unhappy about it?

10 A. No, sir. We have to err on the side of
11 caution. I mean, notifying them may have been a risk as
12 well.

13 Q. A risk for who?

14 A. A risk for the family to leave town.

15 Q. If you tell them that you're coming down here
16 to Court, you think the Brights were going to leave
17 town?

18 A. Err on the side of caution.

19 Q. You heard them come in and talk about how they
20 have over 50 family members in this area.

21 A. Uh-huh.

22 Q. Right?

23 A. Yes.

24 Q. And you're -- are you under oath right now
25 saying you had a concern that the Brights would pick up

1 their kids and run with them if you told them you were
2 coming to court?

3 A. That's a possibility.

4 Q. Why didn't you run out there and get the kids
5 first if you really thought that?

6 A. Because we came to court first.

7 Q. Sir, you had -- you have the ability. It's
8 in -- you know what the CPS handbook is; caseworker
9 handbook?

10 A. Yes.

11 Q. You ever read a copy of it?

12 A. Some of it, yes, sir.

13 Q. You ever read the investigations part of it?

14 A. Yes.

15 Q. You ever read that part that tells you about
16 the different kind of orders that CPS can do with
17 different kind of removals?

18 A. Yes.

19 Q. You have the ability to come down here and grab
20 a child without getting an order, right?

21 A. Notice of removal, yes, sir.

22 Q. Just going and getting them and then coming to
23 court the next day, right?

24 A. Yes.

25 Q. You can do that if you think they are going to

1 run with the kids, right? You think there is no ability
2 to wait until the court, right?

3 A. Right. This was an emergency prior to.

4 Q. You didn't think that in this case, right?
5 Right?

6 A. It was an emergency --

7 Q. You didn't think you needed to run and get them
8 real quick because the Brights were going to go, right?

9 MR. NGUYEN: Objection. Asked and
10 answered.

11 MR. SLATE: He hasn't answered it yet.

12 THE COURT: No. Please answer.

13 Q. (BY MR. SLATE) You didn't seek out the removal
14 without a court order, which is one of the things you
15 can do when you think people are going to run in this
16 case, did you?

17 A. No.

18 Q. So tell me all of the facts as you knew them on
19 September 19th that led you to believe that the Brights
20 would run if they knew you were coming to court first?

21 A. I can't name any.

22 THE COURT: You say "many" or "any"?

23 THE WITNESS: Any.

24 Q. (BY MR. SLATE) So then the next thing you said
25 was a reason for not telling the Brights that you were

1 going to come down here and impinge on their
2 constitutional rights was that the law doesn't require
3 you to?

4 A. Yes.

5 Q. Is that a principle or guidance for you? Law
6 doesn't require you to do something, you don't do it?

7 A. Well, from my understanding, it was an
8 emergency prior to removal, so the order that I received
9 that day was the notice.

10 Q. What's the emergency that day?

11 A. The emergency was the breakdown of the parental
12 child safety placement and the children back in the
13 hands of the alleged perpetrator.

14 Q. On September 19th, 2018, how long did you
15 believe the children had been with Mr. and Mrs. Bright?

16 A. September 19th -- I knew on the 18th.

17 Q. I'm asking you, at that time, how long did you
18 believe the kids had been with them?

19 MR. NGUYEN: Objection, Your Honor. Asked
20 and answered. He just said since September 18th.

21 THE COURT: Overruled.

22 Listen to the question and answer.

23 A. I don't know.

24 Q. (BY MR. SLATE) Why did you think it was an
25 emergency that day, then?

1 A. Because on the 18th, Melissa had informed me
2 that the children were back at the residence.

3 Q. It was at least possible they've been there
4 since August 28th?

5 A. Uh-huh.

6 MR. NGUYEN: Objection. Speculation.

7 THE COURT: As to whether it's possible,
8 that's overruled.

9 Please answer.

10 Q. (BY MR. SLATE) So when you came down here and
11 told the Court it was an emergency, you had no proof it
12 was an emergency, right?

13 A. Yes.

14 Q. What proof did you have?

15 A. The children were back in the home of the
16 alleged perpetrator; and from what we got from our
17 medical team, it was a high possibility that abuse had
18 occurred in the situation and we have small, underage
19 children that cannot protect themselves.

20 Q. Who was the perpetrator?

21 A. Melissa.

22 Q. So not Dillon?

23 A. No. He's not listed as an alleged perpetrator.

24 Q. Well, then why didn't you have this thing filed
25 as a request to have Melissa move out of the house and

1 the children to stay with Dillon?

2 A. Well, during the beginning stage of the
3 investigations, we didn't consider that or staff that to
4 be an option during that time.

5 Q. Why impinge on Dillon Bright's rights when you
6 have no evidence he's a perpetrator?

7 A. And, one, we have an unexplained injury, so we
8 don't know who caused this injury.

9 Q. So any time there is an unexplained injury,
10 whoever it is that's responsible for the children's care
11 at that time is likely to have caused the injury; is
12 that the official CPS position?

13 A. It's alleged.

14 Q. Okay. So it's alleged. But that would mean
15 that whoever it is that has control over the children at
16 the time that the unexplained injury happens should not
17 be allowed to be around the kids unsupervised?

18 A. Right.

19 Q. Was Charlotte injured while in CPS care?

20 A. Yes.

21 Q. Custody of CPS, she was injured, wasn't she?

22 A. Yes.

23 Q. Big gash on her eye, right?

24 A. Yes, sir.

25 Q. Black eye, right?

1 A. Yes. I'm looking at it.

2 Q. Well, how did that happen with certainty, sir?

3 MR. NGUYEN: Objection. Calls for
4 speculation. He wasn't there when the child got
5 injured.

6 THE COURT: Do you know how the child got
7 injured?

8 THE WITNESS: Yes, from the foster parent.
9 She informed me that the child fell out of the bed.

10 Q. (BY MR. SLATE) Are you sure about this? Did
11 you investigate it?

12 A. I spoke to the foster mom about it, yes.

13 Q. Did you immediately remove all of the children
14 from the foster home so you could take precautions to
15 ensure that the children were safe from this foster
16 home?

17 A. No.

18 Q. For this unexplained injury?

19 A. No.

20 Q. Was the person -- were they an eyewitness to
21 the child falling out of the bed?

22 A. The foster mom? No.

23 Q. Well then how do we really know that that's
24 what it was? Did Charlotte, did she say, "I fell out of
25 the bed and that's how I hurt my eye"?

1 A. She didn't say.

2 Q. So she's a young child who can't explain her
3 injury, right?

4 A. Correct.

5 Q. And we have an injury that no one can really
6 say for sure how it happened?

7 A. Yes.

8 Q. And CPS didn't treat this foster mom the same
9 way they treated the Brights?

10 A. That was an incident --

11 Q. Yes or no?

12 A. Not to my knowledge.

13 Q. If CPS had legal care and custody of the kids
14 at that time, should we now keep CPS from having any
15 contact with the Bright children to protect the Bright
16 children?

17 A. I mean, this injury to Charlotte, I had no
18 idea.

19 Q. Sir, you and your supervisor and your program
20 director and your program administrator have custody of
21 these children right now, don't they?

22 A. Yes.

23 Q. And yet this child was injured in y'all's care,
24 wasn't she?

25 A. Yes.

1 Q. And you can't tell me how it happened, can you?

2 A. According to the foster mom, the child fell out
3 of bed.

4 THE COURT: I think his question is --
5 correct me if I'm wrong -- is that you don't have
6 personal knowledge of how the child was actually
7 injured; you just know the child is injured; is that
8 correct?

9 THE WITNESS: Yes. Not firsthand
10 knowledge, but, yes, sir, from what I was told.

11 Q. (BY MR. SLATE) Why should you be allowed
12 around these children? How I do protect them from you?

13 A. I didn't do anything to hurt them.

14 Q. That's the same thing the Brights have said,
15 right?

16 A. Yes.

17 Q. But we don't believe them, right?

18 A. I've never said I didn't believe her.

19 Q. You came down here and sought an affidavit
20 saying you didn't believe them, right?

21 A. Because they violated the PCSP.

22 THE COURT: Sir, that's a yes or no
23 question. "You came down here and sought custody
24 because you didn't believe them," correct or not
25 correct?

1 A. I believe there was a high possibility that
2 abuse has occurred, yes.

3 Q. (BY MR. SLATE) Caused by who?

4 A. The alleged perpetrator.

5 Q. Who?

6 A. Melissa Bright.

7 Q. That's just because she can't explain the
8 second injury?

9 A. That's what she was telling us, she can't
10 explain it.

11 Q. So you heard yesterday Dr. Sarpong say if
12 Melissa Bright had come in and lied about how -- about
13 the child falling down a week before, that that would
14 explain the second injury and we wouldn't be here right
15 now. You heard him say that, right?

16 A. Yes.

17 Q. So essentially, because Melissa Bright was
18 honest, we're here right now, right?

19 A. That's what it seems to be, yes.

20 Q. Because she can't explain, but yet you're
21 saying that she's being dishonest because you believe
22 she did do it?

23 A. I'm saying there is a chance.

24 Q. And you want to take people's children away on
25 a chance?

1 A. I'm not saying that.

2 Q. Well, you did. You came down here and stood in
3 front of the judge and swore under oath that based on a
4 chance, I want to take this lady's children away?

5 A. No. I mean, at that time, we had, again, a
6 high probability that abuse had occurred.

7 Q. Who told you that?

8 A. It's in the medical.

9 Q. You heard the doctor get on the stand and say
10 that all she had to do was lie, and the whole thing was
11 being based upon her not be able to provide a history.
12 You heard him say that, right?

13 A. Yes.

14 Q. Do you think that if you had just called him up
15 and spent 20 minutes on the phone with Dr. Sarpong, that
16 you could've cleared all that up before you came down
17 here and filed to remove these people's children?

18 A. Well.

19 Q. Yes or no?

20 A. No.

21 Q. You don't think you could've cleared it up?

22 A. No.

23 Q. The original safety plan that was done in this
24 case would have allowed the children to remain in their
25 home and their parents to remain with them and they just

1 had to be supervised, but the parents could've stayed
2 all night, right?

3 A. Yes.

4 Q. And this was changed ultimately by your
5 supervisor and Ms. Edwards, right?

6 A. Yes.

7 Q. She made that decision?

8 A. Yes.

9 Q. Did she tell you why she made it?

10 A. Yes. She made it based on further information
11 regarding maternal grandmother, some out-of-state CPS
12 history, and also that other results had come in during
13 that time as to why it was changed from a safety plan to
14 a parental child safety placement.

15 Q. What did she tell you as far as why it would've
16 been now unsafe for the kids to have their parents stay
17 overnight with them?

18 MR. NGUYEN: Objection. Calls for hearsay.
19 He subpoenaed the witness. He can ask her.

20 MR. SLATE: I think they work together in
21 the agency. They are all one party and they're all my
22 opponent.

23 THE COURT: And it also goes to whether --
24 even if not for the truth of the matter asserted -- as
25 to the reasonableness of the actions of FPS, so that's

1 overruled.

2 Please answer.

3 A. So your question?

4 Q. (BY MR. SLATE) What reasons, if any, did your
5 supervisor give for not wanting the parents to be able
6 to stay overnight? What was it that has changed that
7 made it so that they couldn't stay overnight with the
8 children?

9 A. Well, it was further discovered that the
10 maternal grandmother had some out-of-state CPS history,
11 and also that some further testing that came in. And
12 just like myself, my supervisor has been in contact with
13 the social worker which also explained to her that there
14 was a high possibility of abuse.

15 Q. What was the difference between -- let's say,
16 for instance, Mr. Bright. Why could he have not stayed
17 overnight with his children?

18 A. Because, again, we don't -- we have an
19 unexplained injury.

20 Q. We're going to have monitors there, whether
21 it's Ms. Virrell or Ms. Frazier or Ms. Jester.
22 Someone's going to be a safety monitor, right?

23 A. Yes.

24 Q. So what was it specifically that went through
25 you and your supervisor's minds as far as y'all having

1 these discussions about, Hey, we got to protect the kids
2 and the best way to do that is make sure the parents
3 don't sleep overnight?

4 A. Don't have an answer.

5 Q. Was it considered?

6 A. Was it considered? About Dad spending the
7 night?

8 Q. Right.

9 A. I can't recall.

10 Q. Was it considered for Mom to spend the night?

11 A. Initially. With the initial safety plan, yes.

12 Q. Well, when it changed, was it completely
13 because there was this unexplained second injury? Is
14 that why Mom couldn't stay overnight?

15 A. Primarily, yes.

16 Q. So was there a discussion at all about the fact
17 that mother breastfed?

18 A. I don't recall having that conversation with
19 Mom.

20 Q. Did you have it with your supervisor?

21 A. I don't recall.

22 Q. Did you have it at the family team meeting?

23 A. We may have.

24 Q. And so was it ever a concern of yours that this
25 child would need his mother's breast milk?

1 A. Yes.

2 Q. Okay. Well, what were you -- what was your
3 plan or your supervisor's plan to eliminate that
4 concern?

5 A. Well, for the parental child safety placement,
6 Mom could come in and out of the house. She couldn't
7 spend the night. So during those times, that would give
8 her the opportunity to breastfeed.

9 Q. Well, what was it that made Mom more dangerous
10 at night and less dangerous in the day?

11 A. A part of our parental child safety plan
12 placement is that parents are not allowed to spend the
13 night at the residence; and during any daytime visits,
14 they are supervised visits.

15 MS. PROFFITT: Your Honor, I'm going to
16 object as nonresponsive.

17 THE COURT: Yeah.

18 Listen to the question.

19 Q. (BY MR. SLATE) What made Mom more dangerous at
20 night and less dangerous in the day?

21 A. I don't know.

22 Q. And was it talked about that there could be
23 harm to the child to not receive breast milk?

24 A. I believe she may have mentioned something.

25 Q. Was it talked about amongst you and the other

1 members of your team at TDFPS?

2 A. That may have been brought up during the family
3 team meeting.

4 Q. Was it brought up that this child had special
5 needs -- when I say "this child"; Mason -- had special
6 needs in regards to pressure being built up into his
7 skull?

8 A. You asking me a question?

9 Q. Yeah. I'm asking you if it was brought up?

10 A. Yes.

11 Q. Who was it brought up by?

12 A. By Mom.

13 Q. Did you staff it with your supervisor and
14 program director that this child had special needs
15 regarding his -- the pressure that gets built up in his
16 skull?

17 A. Right. It was discussed at the family team
18 meeting.

19 Q. Was it discussed in a staffing with you, your
20 supervisor and your program director?

21 A. Perhaps, with me and my supervisor.

22 Q. Did y'all staff it to say that there is a
23 concern that this child cannot get upset and start
24 crying or could cause injury to himself?

25 A. That may have been a conversation between my

1 supervisor and the program director, but not with me and
2 me supervisor.

3 Q. Never talked about it?

4 A. I don't think so.

5 Q. Sir, the way that CPS is set up, you're kind of
6 at the lowest level, right? You're the investigative
7 worker?

8 A. Yes.

9 Q. You're the boots on the ground, so to speak?

10 A. Yes.

11 Q. You're the one who he is supposed to go out and
12 gather information and provide it to highers to make
13 decisions, right?

14 A. Yes.

15 Q. So when you gathered up this information,
16 you're saying you never had a discussion with your
17 supervisor about the importance of protecting this
18 little child?

19 A. Well, Ms. Bright had been in contact with my
20 supervisor as well about some of the needs regarding --

21 MR. SLATE: Objection. Nonresponsive,
22 Judge.

23 THE COURT: That's sustained.

24 Q. (BY MR. SLATE) Sir, you're saying you didn't
25 have a conversation with your supervisor after doing

1 your investigation and gathering the information that
2 this child might be in danger if he gets upset and
3 starts crying too much?

4 A. I mean, we -- she knew that, yes.

5 Q. Did you have a conversation with her about it?

6 A. Yes.

7 Q. Okay. So when you had that conversation, did
8 you do any followup to say, Hey, we need to make sure we
9 protect this child. We need to do the best by this
10 child?

11 A. Yes.

12 Q. What was your best?

13 A. To keep the child in a stable environment at
14 the Frazier's residence. Ms. Frazier knew about the
15 child's medical needs. She knew about doctor's
16 appointments.

17 Q. Ms. Frazier attended the family team meeting,
18 right?

19 A. Correct.

20 Q. In the family team meeting, Ms. Frazier told
21 you that she needed help, right?

22 A. I don't recall.

23 Q. You don't what?

24 A. I don't recall.

25 Q. Do you recall at all Ms. Frazier voicing that

1 she was having problems with sleep exhaustion because
2 she had to continually get up with Mason in the middle
3 of the night?

4 MR. NGUYEN: Objection. Calls for hearsay.

5 MR. SLATE: Offering it for truth of the
6 matter asserted, Judge, as to whether he got notice that
7 was an issue.

8 THE COURT: For that limited purpose, I'll
9 allow it.

10 A. I don't recall.

11 Q. (BY MR. SLATE) I'm going to point your
12 attention to Exhibit No. 36. This is the family team
13 meeting about 18 minutes, 53 seconds -- 57 seconds.

14 (Respondent Mother's Exhibit No. 36
15 published to the Court)

16 Q. (BY MR. SLATE) You recognize that to be
17 Ms. Frazier's voice, right?

18 A. That sounds like Ms. Frazier, yes.

19 (Respondent Mother's Exhibit No. 36
20 published to the Court)

21 Q. (BY MR. SLATE) So, Mr. Jones, it was real
22 clear at that meeting from Ms. Frazier she needed help.
23 She wanted and requested that y'all do the change to the
24 Jesters, right?

25 A. Yes.

1 Q. And so you're saying today that even though you
2 heard that woman say it was getting hard, that this
3 child needs constant attention and he wakes up 17, 21
4 times a night, that you thought the kids just staying
5 at -- the kids are just staying over there at the
6 Fraziers and we don't even do anything. That's how you
7 handled it?

8 A. No.

9 Q. Well, what you're trying to tell us today is
10 that from August 28th through September 18th, you had no
11 contact with the Fraziers or the Brights, right?

12 A. Correct.

13 Q. And that you just thought the entire time the
14 kids are still over at the Frazier's house, right?

15 A. Possibility, yes.

16 Q. Well, sir, when we look over here at the text
17 message thing between you and Melissa Bright, we notice
18 that there are -- starting here, from August 15th --
19 almost daily communication between you and Ms. Bright,
20 right?

21 A. Yes.

22 Q. That's -- August 15th is the day after y'all
23 had the family team meeting?

24 A. Yes.

25 Q. And almost daily, Mrs. Bright is sitting here

1 saying -- giving you information about the child and
2 also talking about wanting to know when the PCSP was
3 going to be approved, right?

4 A. Correct.

5 Q. It was supposed to be approved according to the
6 family team meeting documents on Friday, August 17th,
7 right?

8 A. Yes.

9 Q. Every time you then send requests of how the
10 kids are doing, Ms. Bright replies to you, right?

11 A. Yes.

12 Q. We look page 4 of Exhibit 15. She's continuing
13 to explain to you in detail what's going on with Mason,
14 right?

15 A. Yes.

16 Q. You knew the entire time from the 14th of
17 August until the 22nd of August he had been in the
18 hospital, correct?

19 A. Correct.

20 Q. And daily, they are asking you about when the
21 PCSP is going to be approved, correct?

22 A. Correct.

23 Q. Then it goes through here. We're on now
24 August 23rd. This is the day they were getting out --
25 on August 22nd, getting out of the hospital, right?

1 A. Yes.

2 Q. And here is when you've heard the testimony
3 that they were telling you, Hey, we really need to be
4 able to leave the hospital and go to the Jester's house,
5 correct?

6 A. Correct.

7 Q. And you tell them, "Okay, that should be fine"?

8 A. Yes.

9 Q. Now, since then, you have kind of decided -- or
10 you've kind of explained that this right here -- that
11 "okay, that should be fine," -- was not you telling them
12 that they could go to the Jesters, just that it could be
13 okay, but you didn't know, right?

14 A. Yes.

15 Q. Can you look at that and see any way, shape or
16 form that the Brights thought that you were giving them
17 permission to begin the PCSP at the Jesters?

18 A. I don't know because I said "should" be fine.

19 Q. That's not what I asked you, sir. Can you look
20 at it and see from their point of view where they
21 thought that's you telling them --

22 MR. NGUYEN: Objection. Speculation,
23 Judge. He's asking to speculate what's coming from
24 their point of view.

25 THE COURT: The question is: Can you look

1 at it from their point of view? No, that's overruled.
2 I'll allow it.

3 A. No.

4 Q. (BY MR. SLATE) So there is no way you see it
5 whatsoever as permission from you, as a representative
6 of the Agency, that they could start the PCSP with the
7 Jesters?

8 A. Correct.

9 Q. Then here you tell them: "We did consult with
10 legal and we do not have grounds for removal, but we do
11 have to offer you services. Would you guys be willing
12 to work services through family based," right?

13 A. Yes.

14 Q. Why did you tell her that?

15 A. Because I tried to be transparent with the
16 family since they want me to give them any updates that
17 I would've had at that time, that moment.

18 Q. So at this point in time, there weren't grounds
19 to say that these kids needed to be removed, right?

20 A. Yes.

21 Q. And at that point in time, CPS knew about both
22 skull fractures?

23 A. Yes.

24 Q. Knew about the brain bleed?

25 A. Yes.

1 Q. Knew about the hematology reports?

2 A. No.

3 Q. This is August 22nd, sir?

4 A. Hematology reports?

5 Q. You were handed them at the family team meeting
6 meet on August 14th, correct?

7 A. Yes.

8 Q. You knew about them?

9 A. Yes.

10 Q. Knew about the results of the skeletal surveys
11 done on both kids?

12 A. Yes.

13 Q. Knew about the blood in the eyes?

14 A. Yes, sir.

15 Q. After all that, still didn't have grounds to
16 remove?

17 A. Yes.

18 Q. After this text message was sent and there
19 weren't grounds to remove, the only thing that you say
20 changed was you found out the PCSP was violated?

21 A. Yes.

22 Q. That's the reason you filed the emergency,
23 totally, right?

24 A. No.

25 Q. Here you're asking: "Will you guys be willing

1 to work through family based"?

2 A. Yes.

3 Q. And Mrs. Bright calls you on the phone after
4 this text message, doesn't she?

5 A. Yes, I believe there was a conversation.

6 Q. And she told you, "Yes, we'll work services"?

7 A. Yes.

8 Q. Then we go to August 23rd. She's now
9 explaining to you that she's talking about the fact that
10 you had called them while they were on the road and told
11 them that they could not go to the Jesters, correct?

12 A. Yes.

13 Q. Why did you do that?

14 A. Well, because -- just to reiterate to them that
15 we didn't have an approval. That same day, I even had
16 my supervisor to talk to them and explain to them that
17 we had not received an approval for the placement.

18 Q. At this point in time, do you feel any sense of
19 urgency on August 22nd to make sure that this case is
20 put in front of your program director's face?

21 A. It's my job to get it to my supervisor.

22 MR. SLATE: Objection, Your Honor.
23 Nonresponsive.

24 THE COURT: Listen to the question.

25 Q. (BY MR. SLATE) Did you feel any sense of

1 urgency, knowing this child was getting released from
2 the hospital for brain surgery, to get this case put in
3 front of your program director's face?

4 A. No.

5 Q. Don't you think that it would be a good idea to
6 make sure that this child was going to the place that
7 everyone wanted him to go to on the day he got released
8 from surgery?

9 A. Yes.

10 Q. The place that you and your supervisor had
11 already, yourselves, approved on the home study
12 yourselves, right?

13 A. We didn't approve.

14 Q. Well, why did you write it in the family team
15 meeting that it was going to happen on a certain date,
16 pending PD approval?

17 A. I didn't write it.

18 Q. Did you sign off on it?

19 A. Yes.

20 Q. Why did you sign it if you didn't agree with
21 it?

22 A. Again, it was contingent upon the PD approval.

23 Q. Do you sign a lot of things you don't agree
24 with?

25 MR. NGUYEN: Objection. Argumentative.

1 THE COURT: Overruled.

2 A. No, sir.

3 Q. (BY MR. SLATE) Just the family team meeting?

4 A. No.

5 Q. So when kids get out and then are partially
6 away from the hospital towards the Jester, you make that
7 call and tell them what?

8 A. That we still don't have an approval.

9 Q. Why didn't you have an approval?

10 A. Because there is a chain of command that we
11 have to follow.

12 Q. Why didn't you have an approval?

13 A. I don't know.

14 Q. Where was the PD?

15 A. I believe PD was in training during that time.

16 Q. When did the PD go to training?

17 A. I don't really remember.

18 Q. We're on August 22nd --

19 A. Okay.

20 Q. -- and you had made the agreement in the family
21 team meeting on August 14th to get PD approval, right?

22 A. Yes.

23 Q. Your PD approval deadline was August 17th,
24 right?

25 A. Yes.

1 Q. Are you testifying that the PD was out of town
2 from August 14th to August 22nd?

3 A. I don't know if she was out of town.

4 Q. Was she out of town for training or was she in
5 town for training?

6 A. I don't know. I just know she was in training.

7 Q. Who told you that?

8 A. My supervisor.

9 Q. You never verified it?

10 A. No.

11 Q. You've been telling everyone like it's true,
12 but you don't know?

13 A. From my supervisor.

14 Q. Do you believe this was your supervisor's fault
15 for not making sure this happened?

16 MR. NGUYEN: Objection. Argumentative.

17 THE COURT: Overruled.

18 A. No.

19 Q. (BY MR. SLATE) Why? Whose fault is it if the
20 PD doesn't approve?

21 A. The concern was for --

22 MR. SLATE: Objection, Your Honor.
23 Nonresponsive.

24 THE COURT: The question is: Whose fault
25 is it if the PD didn't approve?

1 A. Nobody's.

2 Q. (BY MR. SLATE) Yours, Ms. Edwards or the PD's?

3 A. Nobody's fault.

4 Q. Nobody at CPS takes responsibility for not
5 following through with the family team meeting
6 paperwork?

7 MR. NGUYEN: Objection. Argumentative.

8 THE COURT: That's overruled.

9 Please answer.

10 A. I was hopeful --

11 MR. SLATE: Objection, Your Honor.
12 Nonresponsive.

13 THE COURT: Listen to the question.

14 Q. (BY MR. SLATE) Nobody takes responsibility for
15 not following through on the family team meeting
16 paperwork? Look right there on the screen, Exhibit No.
17 31, page 5.

18 A. I see it.

19 Q. Read that highlighted portion?

20 A. "The decision will be made by Friday,
21 August 17th, 2018, and the family will be notified. The
22 change of residence will take place on Sunday
23 August 19th, 2018."

24 Q. Move it over to page 7. Whose signatures do
25 you see down there as CPS staff?

1 A. My supervisor and myself.

2 Q. So y'all signed off on it, right?

3 A. Yes, sir.

4 Q. Here it says at the top by your signature:

5 "We're indicating that we care about the issues
6 discussed in this document, that we have agreed to
7 assist and participate in some way to help resolve the
8 safety, risk and well-being issues for children
9 involved," right?

10 A. Yes.

11 Q. Do you believe that that statement applies to
12 you and your supervisor?

13 A. Yes, sir.

14 Q. So if y'all had made the agreement that that's
15 supposed to happen on the 17th and the move is supposed
16 to happen on the 19th, you agree with me that you and
17 your supervisor failed in that respect, right? Right,
18 sir? That decision was not made on August 17th, was it?

19 A. It was not.

20 Q. The family was not notified of a decision on
21 August 17th, was it?

22 A. No.

23 Q. That change of residence did not take place on
24 Sunday, August 19th, 2018?

25 A. No.

1 Q. Who is the only entity that has the authority
2 to make those things happen?

3 A. Myself, my supervisor and program director.

4 Q. So of the three of y'all, who is responsible
5 for the failure of that not happening?

6 A. I don't know that I would call it a failure.

7 Q. I don't care what you call it. Who didn't make
8 it happen?

9 MR. NGUYEN: Objection. Sidebar.

10 THE COURT: That's sustained as to sidebar.

11 Q. (BY MR. SLATE) Who did not make it happen,
12 sir?

13 A. The program director has the final approval.

14 Q. So it's the program director's fault, yes or
15 no?

16 A. I'm not saying that.

17 Q. Who are you saying, sir?

18 A. What I'm saying is that it's her final
19 approval.

20 Q. Whose fault is it that CPS didn't live up to
21 what they agreed to to help and assist these children?

22 A. She has to approve it.

23 Q. I gave you three choices; you, Ms. Edwards or
24 your program director. Which of those three do you
25 choose?

1 A. We didn't get a signature from the program
2 director.

3 Q. It's your program director's fault?

4 A. I'm not saying it's her fault.

5 Q. Is it your fault?

6 A. I'm just saying --

7 Q. Is it your fault?

8 A. No.

9 Q. Is it Ms. Edward's fault?

10 A. No.

11 Q. None of your fault?

12 A. No.

13 Q. You take no responsibility?

14 A. As far as my part --

15 MR. SLATE: Objection, Your Honor.

16 Nonresponsive.

17 THE COURT: Sir, the question, as I
18 understand it, is: Are you taking responsibility or
19 not?

20 A. No.

21 Q. (BY MR. SLATE) When we look here at the
22 parental child safety placement on page 2, that
23 placement, it's got some language here in the middle
24 about CPS duties, right?

25 A. Yes, sir.

1 Q. Now, the part -- first off, what are the CPS
2 duties in this particular parental child safety
3 placement?

4 A. "CPS will make contact with the family every
5 ten days and provide services as needed."

6 Q. Okay. Do you believe that CPS is required to
7 live up to its duties under a parental child safety
8 placement?

9 A. Yes.

10 Q. Do you believe that if CPS doesn't live up to
11 its duties, that it violates the parental child safety
12 placement?

13 A. No.

14 MR. NGUYEN: Objection, Your Honor. That
15 will call for a legal conclusion.

16 THE COURT: That's overruled.

17 Please answer.

18 A. No.

19 Q. (BY MR. SLATE) Do you believe that CPS can
20 violate a parental child safety placement?

21 A. In terms of ten days, maybe ten days' contact.

22 Q. So I asked you: Do you believe that CPS can
23 violate a parental child safety placement, yes or no?

24 A. Yes.

25 Q. Do you believe CPS violated the parental child

1 safety placement that you're looking at right now that
2 was done on the Bright case?

3 A. As far as duties that I didn't follow up with
4 the family in ten days, yes.

5 Q. So if CPS violates a parent child safety
6 placement, is it really still in effect?

7 A. Yes.

8 Q. But just in effect as it applies to the
9 parents, then, right?

10 A. It applies to everyone.

11 Q. I mean, if CPS violates the parental child
12 safety placement, can the parents then just say we don't
13 want to do it if CPS doesn't want to do it?

14 A. They could say that.

15 Q. Right. Because that's what happened in this
16 case. CPS didn't do it, right?

17 A. Yes.

18 Q. CPS just ignored its duties, right?

19 A. I wouldn't say "ignored," but, no, yes.

20 Q. What do you mean you wouldn't say "ignored"?

21 A. Because I had already explained to you that Dad
22 said he wasn't cooperating. So when he said he didn't
23 want to cooperate --

24 Q. I'm sorry. When I read: "CPS will make
25 contact with the family every ten days and provide

1 services as needed," what part of that says: "Except
2 unless Dad said he won't cooperate"?

3 A. It doesn't, but that's still his right.

4 Q. You didn't try to make any more contact, right?

5 A. Not at that point.

6 Q. Because on September 18th, when we looked at
7 those text messages you sent to Mrs. Bright, she
8 immediately replied?

9 A. Yes.

10 Q. And all you had to do to follow the plan would
11 be to have texted her or come and seen her or talked to
12 her, right?

13 A. I believe I did text her.

14 Q. What day?

15 A. On the 18th.

16 Q. Was that within ten days of your last contact?

17 A. No.

18 Q. So you violated it?

19 A. I didn't live up to my duty.

20 Q. You violated the plan, sir, right?

21 MR. NGUYEN: Objection. Asked and
22 answered.

23 THE COURT: That's overruled. The question
24 was "violated," "not lived up to my duty."

25 Q. (BY MR. SLATE) You violated the plan, right?

1 A. Yes.

2 Q. Did you, when you came down here to court on
3 September 19th, inform the Court of your violation of
4 the parental child safety plan?

5 A. No.

6 Q. Why? Why didn't you tell them?

7 A. Didn't.

8 Q. You didn't think the Court should have the full
9 picture of what was going on in the case before you
10 asked the Court to give you an order to remove the
11 children?

12 A. I didn't think the Dad was going to cooperate.

13 Q. That's not what I asked you, sir. You didn't
14 think the judge needed to know the full picture before
15 signing an order removing someone's children from them;
16 is that what you thought?

17 A. I mean, this -- I didn't --

18 MR. SLATE: Objection, Your Honor.
19 Nonresponsive.

20 THE COURT: Yeah, please listen to the
21 question and answer only what is asked and stop and wait
22 for the next question.

23 THE WITNESS: Okay.

24 Q. (BY MR. SLATE) When you came up here, did you
25 think that the judge needed the full picture of what's

1 going on before signing an order removing these people's
2 children?

3 A. Yes.

4 Q. Especially since you decided not to tell the
5 people, the Brights, that you were coming down here,
6 right?

7 A. Yes.

8 Q. It would've been better for the judge to know,
9 since you weren't going to let the Brights speak for
10 themselves, that, "Hey, Judge. We, CPS, violated this
11 plan first."

12 A. That wasn't on my mind about this ten day
13 contact.

14 Q. So you didn't want the Court to know that,
15 right?

16 MR. NGUYEN: Objection, Your Honor. That
17 mischaracterizes his prior testimony. He said it was on
18 his mind.

19 MS. PROFFITT: He said it "wasn't."

20 MR. NGUYEN: Wasn't on his mind at the
21 time.

22 THE COURT: He can answer the question.

23 Q. (BY MR. SLATE) You didn't want the Court to
24 know that?

25 A. No, not that I didn't want the Court to know.

1 Q. Why didn't you tell them?

2 MR. NGUYEN: Objection. Asked and
3 answered. He already answered that. It wasn't on his
4 mind at the time.

5 THE COURT: That's sustained.

6 Next question.

7 Q. (BY MR. SLATE) So when you talk about the
8 third reason that you didn't tell the parents about
9 coming to court was that they were going to be
10 combative, right?

11 A. Yes.

12 Q. And you mean that when you came down here to
13 court, you'd be afraid for yourself here in the
14 courtroom?

15 A. Yes.

16 Q. You didn't think Deputy Hutchinson would be
17 able to protect you?

18 A. Yes.

19 Q. You did think?

20 A. Yes.

21 Q. But yet you were still so afraid of Melissa
22 Bright, Dillon Bright, that you didn't want them to be
23 able to tell the judge their side of the story when you
24 came down here?

25 A. No.

1 Q. Why did you wait until after 5 o'clock to
2 remove their children?

3 A. I was waiting on law enforcement.

4 Q. Sir, you text messaged the day before?

5 A. I did.

6 Q. And said you were coming after 5:00?

7 A. Right.

8 Q. Why did you wait until 5:00?

9 A. Well, that --

10 MR. NGUYEN: Objection. Asked and
11 answered. He was waiting on law enforcement.

12 THE COURT: Well, the first question was --
13 well, all right. That's sustained. Next question.

14 Q. (BY MR. SLATE) Sir, when did you contact law
15 enforcement? Did you do it on September 18th?

16 A. No.

17 Q. Did you hear from law enforcement on
18 September 18th that they wouldn't be available until
19 after 5 o'clock?

20 A. No.

21 Q. Then why did you set it for 5 o'clock?

22 A. To meet the family on the 18th, I set it for
23 5 o'clock because there were other cases that I had to
24 go on. And so at that time, we agreed to meet.

25 Q. Why did you get an order from this court and

1 wait until they had no ability to contact the court or a
2 lawyer to come and help them before you removed?

3 A. Nothing was done maliciously. I waited --

4 MR. SLATE: Objection, Your Honor.

5 Nonresponsive.

6 THE COURT: Yeah. Please listen to the
7 question.

8 Q. (BY MR. SLATE) Sir, you got that order about
9 12:30 in the afternoon, didn't you?

10 A. Roughly, yes, sir.

11 Q. You had it in your pocket for at least four and
12 a half hours before the courts close and businesses in
13 general close, right?

14 A. Yes.

15 Q. And you chose to wait until after when these
16 parents couldn't have gotten down here or contacted the
17 Court and gotten the Court to reconsider the removal,
18 right?

19 A. No.

20 Q. You didn't wait?

21 A. Yes, I did wait.

22 Q. You could've gone directly out to their house,
23 right?

24 A. Right.

25 Q. But you chose not to?

1 A. That's yes, correct.

2 Q. And then when you say, "I was waiting on law
3 enforcement," you went to their house without law
4 enforcement?

5 A. Yes.

6 Q. So you weren't waiting on law enforcement?

7 A. Yes, I was.

8 Q. And then when you got there without law
9 enforcement with a removal order, did you get a bunch of
10 combativeness?

11 A. Yes.

12 Q. You did? You got physically intimidated?

13 A. No. Probably mostly mentally.

14 Q. You were mentally intimidated?

15 A. Verbally, parents with their voices.

16 Q. Is that a yes you were mentally intimidated?

17 A. Yes.

18 Q. Are you often mentally intimidated?

19 MR. NGUYEN: Objection. Argumentative.

20 THE COURT: Sustained.

21 Next question.

22 Actually, I'll tell you what, that's
23 overruled.

24 Please answer.

25 Q. (BY MR. SLATE) Are you often mentally

1 intimidated?

2 A. In certain capacities, I would say yes.

3 Q. What are those capacities?

4 A. Being haggled, being --

5 Q. When people might ask you questions, right?

6 When people might question your actions, right?

7 A. No.

8 Q. Are you mentally intimidated today?

9 A. No.

10 Q. So you're fine here with someone here asking
11 you these questions and being tough on you, right?

12 A. To a certain degree.

13 Q. But this doesn't mentally intimidate you, but
14 these sweet people here, the Brights, they mentally
15 intimidated you?

16 A. They were being aggressive.

17 Q. More than I am?

18 A. No.

19 Q. But I don't intimidate you?

20 A. Pled the Fifth.

21 Q. With what you know now as you sit here today,
22 you agree that as of the time you removed the children,
23 that they were not in danger with the Brights?

24 A. Do I believe?

25 Q. Do you believe now, as you sit here today, with

1 everything you know today, that as of the day you
2 removed them, the children from the Brights, that they
3 were not actually in danger when you removed them?

4 A. Not when I removed them.

5 Q. They were not in danger?

6 A. They were -- when I went to the residence, they
7 appeared to be fine.

8 Q. And so you agree with me right now there wasn't
9 danger actually present in those children at the time of
10 removal?

11 A. At the time, like I said --

12 Q. Yes or no?

13 A. Yes.

14 Q. Yes, there was danger, or, no, there wasn't?

15 A. Yes, there was.

16 Q. What was the danger?

17 A. The child is back in the home of an alleged
18 perpetrator that could've caused the injury to this
19 child. The child cannot speak for themselves.

20 Q. As we sit here today, you believe that Melissa
21 Bright should not and cannot be around her children
22 unsupervised because she's a danger today; is that what
23 you're saying?

24 A. She appears to be motherly, yes. I mean --

25 Q. I'm asking you: Is she a danger? Is that your

1 belief today as we sit here that she cannot be around
2 her children unsupervised?

3 A. Well, because of the caused injury.

4 Q. When are you ever going to figure that out or
5 can Ms. Bright never be around her kids from this point
6 forward?

7 A. No, sir, I'm not saying that.

8 Q. When are you going to figure that out? How
9 much longer do you have to wait?

10 A. It's not just based on me.

11 Q. I'm asking your belief, sir?

12 A. I don't know.

13 Q. What is it that needs to happen, in your
14 opinion, for Mrs. Bright to be around her children
15 unsupervised?

16 A. I don't know.

17 Q. What is it that you thought was a danger then
18 that's changed from now?

19 A. A danger then?

20 Q. Because on September 19th, you knew that she
21 was a danger, right?

22 A. I knew the kids were back in the home.

23 Q. And today, you know she's a danger, right?

24 A. I can't say with certainty today.

25 Q. Well, you couldn't say it back then either,

1 then, right?

2 A. No, but there was a high chance.

3 Q. Well, did you put in your affidavit anywhere
4 that you weren't certain she was a danger?

5 A. Well, the children were back home.

6 MR. SLATE: Objection, Your Honor.

7 Nonresponsive.

8 THE COURT: Please listen to the question.

9 Q. (BY MR. SLATE) Did you put it in your
10 affidavit that you weren't certain the children were in
11 danger?

12 A. No.

13 Q. So what was the urgent need for protection on
14 September 19th for Mason and Charlotte Bright?

15 A. Violation of parental child safety placement,
16 and the children were back in the care of an alleged
17 perpetrator as to there is an unexplained injury to this
18 child that cannot protect themselves.

19 Q. Do you think that CPS should remove children
20 based upon what ifs or maybes or possibilities?

21 A. No.

22 Q. But that's what they did in this case, right?
23 Maybe Melissa Bright harmed her child; it's possible
24 Melissa Bright harmed her child, right?

25 A. Yes.

1 Q. There is no certainties, right?

2 A. Right.

3 Q. So we shouldn't have removed them from Melissa
4 Bright based on possibilities and maybes, right?

5 A. Plead the Fifth.

6 Q. We did remove them on possibilities and maybes,
7 didn't we?

8 MR. NGUYEN: Objection. Asked and
9 answered.

10 THE COURT: Different question.

11 A. Plead the Fifth.

12 Q. (BY MR. SLATE) Who did you staff removing the
13 Bright children with?

14 A. My supervisor.

15 Q. Did you have any direct involvement with your
16 program director on this removal?

17 A. Not on the 19th, no, sir.

18 Q. When did you have contact with your program
19 director? Two days later when I started emailing
20 everyone?

21 A. Perhaps, roundabout.

22 Q. Why didn't you leave a notice of removal when
23 you removed the children on September 19th?

24 A. Because I had a court order notice that served
25 as a notice of removal.

1 Q. Did you give a copy of the court order to the
2 parents?

3 A. No.

4 Q. So you didn't give them a copy of the order,
5 nor did you provide the notice of removal?

6 A. No.

7 Q. Did you know that the code required you to
8 leave a notice of removal?

9 MR. NGUYEN: Objection. Calls for a legal
10 conclusion.

11 THE COURT: The question is: Did you know?
12 Do you know?

13 A. Prior to emergency removal -- prior to
14 emergency?

15 Q. (BY MR. SLATE) You didn't give a notice of
16 removal until you emailed it to me on Friday afternoon,
17 right?

18 A. Correct.

19 Q. About 36 hours after you removed the children?

20 A. Yes.

21 Q. You didn't provide --

22 THE COURT: Hang on. Let's go back. I
23 don't know that the question was ever answered.

24 Did you know that you had to -- that the
25 law requires you to provide a notice of removal?

1 THE WITNESS: Okay. My understanding was
2 because it was an emergency prior to, that the court
3 order document served as the notice of removal.

4 MR. SLATE: May I approach the witness?

5 THE COURT: Yes.

6 I still am not sure that that answers the
7 question.

8 Did you know that the law requires that you
9 provide a notice of removal?

10 THE WITNESS: No.

11 THE COURT: You did not know that?

12 THE WITNESS: My understanding was if it
13 was the removal before the court hearing, that's when we
14 provide notice of removal.

15 THE COURT: But you didn't provide notice
16 before the court hearing?

17 THE WITNESS: No, sir. No, sir.

18 THE COURT: Why not?

19 THE WITNESS: Because my understanding was
20 that if we remove the child before coming to court, then
21 at that time we provided a notice of removal, not an
22 emergency prior to.

23 THE COURT: Your understanding --

24 THE WITNESS: Yes, sir.

25 THE COURT: You've been taught that you

1 don't, prior to an emergency hearing, tell the parents
2 in person or with a piece of paper that you are going to
3 approach a court and ask for an emergency hearing?

4 You're telling me that's what you've been taught at FPS?

5 THE WITNESS: That's my understanding.

6 THE COURT: Who taught you that?

7 THE WITNESS: I can't recall.

8 THE COURT: Okay. Let's take a break.

9 Maybe ten minutes.

10 (Brief recess)

11 Q. (BY THE COURT) Sir, you said earlier you're
12 familiar with the CPS caseworker's handbook, right?

13 A. Yes.

14 Q. Here, looking at Section 54.14 of that
15 handbook, "Obtaining a Waiver of the Requirement to
16 Provide Notice of Removal," what does it say you have to
17 do in order to get a waiver within your agency not to
18 provide the notice of removal?

19 MR. NGUYEN: Objection. Relevance, Judge.
20 I don't see how that relates to this case.

21 THE COURT: That's overruled.

22 A. And the question was?

23 Q. (BY MR. SLATE) What does it say you can do to
24 try and get a waiver of the requirement to provide a
25 notice of removal?

1 A. "At the initial hearing, DFPS may ask the court
2 to waive the requirements to provide a notice of
3 removal. To do so, DFPS must provide documentation to
4 the court showing that:

5 the person to be notified could not be
6 located;

7 the case meets the criteria for a Baby
8 Moses case under Subchapter D of Chapter 262, Emergency
9 Possession of Certain Abandoned Children;

10 there is other good cause for not providing
11 notice."

12 Q. Did you ask the Court for permission not to
13 have to provide a notice of removal?

14 A. No.

15 Q. And you're saying that no one at CPS ever
16 taught you this section or the requirement to provide
17 the notice of removal?

18 A. Yes.

19 Q. Yes, they taught you, or, no, they didn't?

20 A. Yes, they have.

21 Q. So they did teach you. So you did know you
22 were supposed to give a notice of removal?

23 A. There are other good causes for not providing
24 notice.

25 Q. So you're saying, yes, you did know you were

1 supposed to provide a notice of removal?

2 A. No.

3 Q. Well, why would you have known that you're
4 supposed to seek permission from the court to get a
5 waiver if you didn't know you had to have a notice?

6 MR. NGUYEN: Objection. Relevance. I
7 don't think the waiver relates to this case, Judge, to
8 ask for a court order for removal. That's it.

9 MR. SLATE: Judge, he's saying that he
10 didn't know that he was supposed to have a notice of
11 removal or left a notice of removal with the parents.
12 Then he just said he does know that if he's isn't going
13 to leave a notice of removal, he knows he's supposed to
14 seek a waiver.

15 MR. NGUYEN: But the circumstances of what
16 he believed at the time does not require a notice of
17 removal.

18 THE COURT: I think what you're saying is
19 that his response indicates he's looking at the third
20 possibility, not the first one where you have to ask the
21 judge for the waiver.

22 MR. NGUYEN: The first one; the person to
23 be notified could not be located.

24 THE COURT: Right. But I'm saying this
25 witness testified that if -- he believed that he didn't

1 because he said it was good cause; is that what
2 you're --

3 MR. NGUYEN: No. He just asked him to read
4 it. I'm saying that this section of the handbook
5 doesn't apply to this case, which is why I objected to
6 relevance.

7 THE COURT: Why would it not be relevant to
8 this case?

9 MR. NGUYEN: Because the notice of removal
10 that he's talking about is under circumstances where
11 exigent circumstances -- there are exigent circumstances
12 to serve them with a notice of removal first, then go to
13 the court to ask for the emergency court ordered
14 protection. That's not what happened here. He went to
15 the court first before he removed the children.

16 MR. SLATE: Judge, I'm not sure Mr. Nguyen
17 understands what 262.109 requires, but it doesn't
18 differentiate between a court ordered removal versus an
19 emergency without a court ordered removal. It all says
20 is a notice of removal is required, and that's what the
21 DFPS guidelines cover. In fact, that section is more
22 basic process when conducting a nonemergency removal,
23 and then that next section is obtaining a waiver of the
24 requirement to provide.

25 THE COURT: I mean, doesn't it read that

1 the duty is there presumptively and only isn't required
2 if the person couldn't be located, it's a Baby Moses
3 case, or there is good cause for providing notice.

4 MR. NGUYEN: Right. And the circumstances
5 where the child has to be removed prior to requesting a
6 court order for -- the department taking possession of a
7 child prior to obtaining a court order.

8 MR. SLATE: That can't be possible, Judge,
9 because it says at the initial hearing, DFPS may ask for
10 permission not to leave it.

11 MR. NGUYEN: No. They have to show -- they
12 have to justify their reasons why no such notice of
13 removal was ever provided --

14 THE COURT: Right.

15 MR. NGUYEN: -- at the time because, one,
16 no person could be notified because they could not be
17 located. That's one. And under the Baby Moses statute,
18 there is no parent to give it to; and then the other,
19 good cause. So by law, they are required to serve a
20 notice of removal if the parent is there; but if there
21 is no parent, that is a justification as to why the
22 requirement to provide notice of removal is waived,
23 which is why that section does not apply in this case
24 because that's not what happened.

25 MR. SLATE: Mr. Nguyen now agrees with me

1 that he should've left a notice of removal. I'm asking
2 him if the only way he can get out of this notice of
3 removal is through this proof.

4 MR. NGUYEN: No. Only if the exigent
5 circumstances exist to take possession of a child prior
6 to getting a court order. There is a particular statute
7 on that. There is a statute where you take first, then
8 ask for a court order; or you ask for a court order,
9 then you take possession.

10 MR. SLATE: 262.109 does not differentiate.

11 MR. NGUYEN: There is two statutes. There
12 is a second statute. I don't have my code book with me.

13 MR. SLATE: I think it is relevant, Judge.

14 THE COURT: That's overruled.

15 Q. (BY MR. SLATE) Sir, you're saying that you
16 knew of this provision requiring you to get court
17 approval to not leave a notice, but you didn't know you
18 had to leave a notice; is that right?

19 A. No. 3 says there is good cause for not
20 providing notice.

21 Q. But do you see the first part of the sentence?
22 It says you got to ask the court for permission and that
23 those are the reasons you might ask the Court for
24 permission?

25 A. Yeah, I see that.

1 Q. You didn't ask the court for permission, right?

2 A. No.

3 Q. You're saying you knew about this provision.

4 If you wanted the court to waive that requirement, you
5 knew what you had to do; but in the same breathe, you're
6 also saying you didn't know you had to leave a notice.

7 How can that be, sir?

8 A. My understanding is that when you have an
9 emergency prior to, the documents from the court is the
10 notice of removal.

11 THE COURT: I'm sorry, say that again?

12 A. My understanding is an emergency prior to
13 removal is the -- the documents obtained from the court
14 is the notice of removal.

15 Q. (BY MR. SLATE) Of which you didn't leave
16 either document, right?

17 A. No. No, sir.

18 Q. So did you -- let me ask you this: Why didn't
19 you leave any documentation with the parents?

20 A. I did leave documentation.

21 Q. What?

22 A. I did leave documentation.

23 Q. Of the removal?

24 A. Of the caregiver resource form.

25 Q. So why didn't you leave any documentation of

1 the removal?

2 A. Because the document I had from the court, am I
3 supposed to give it to the parents?

4 Q. You don't know?

5 A. No.

6 Q. You don't know whether you're supposed to give
7 it to them?

8 A. I'm not supposed to give them that paperwork.

9 MR. NGUYEN: Objection as to relevance,
10 Your Honor. He's stating that the 262.109 is what's
11 applicable in this case. That is completely wrong, Your
12 Honor. That would require that there is exigent
13 circumstances and he's required to service notice at
14 this point in time to take possession of the child and
15 then come to court to justify his reasons why no notice
16 was provided, which is under the section that Mr. Slate
17 was referring to, there is no parent to give it to or
18 good cause. 262.109 does not apply to this case. The
19 caseworker removed pursuant to 262.104. -- no not
20 104 -- 102.

21 And, I'm sorry, Your Honor. On that note,
22 262.109, the written notice of removal, we then notified
23 the parents with that notice that an initial hearing
24 will be held for us to ask for a waiver of the notice of
25 removal. So the -- in that sense, the initial hearing

1 comes after taking possession of the child.

2 MR. SLATE: May I reply, Judge?

3 THE COURT: Yes.

4 MR. SLATE: So 262.109, first paragraph:

5 "(a) the Department of Family and
6 Protective Services or other agency must give written
7 notice as prescribed by this section to each parent of
8 the child or to the child's conservator or legal
9 guardian when a representative of the department or
10 other agency takes possession of a child under this
11 chapter."

12 If you look at the top of the code page, it
13 says "Chapter 262," which would cover every section of
14 262 because it's the full chapter. If you take
15 possession under that chapter, you must give -- must
16 give notice under 262.109.

17 THE COURT: Yeah, isn't 262.102 bound by
18 the rules of notice outlined in 262.109? I mean,
19 262.102 says what the emergency order has to find;
20 262.109 talks about the notice that must be given unless
21 the court waives it on showing that the parents couldn't
22 be located.

23 MR. NGUYEN: Your Honor, I apologize.
24 Perhaps I misspoke. What happened here was he exercised
25 under 262.101; filing the petition before taking

1 possession of a child.

2 MR. SLATE: May I, Judge?

3 THE COURT: Yes. So I just want to make
4 sure before you respond.

5 Mr. Nguyen, you're saying that the agency
6 filed this hearing -- the emergency hearing that was had
7 in this case was under 262.101, not 262.102.

8 MR. NGUYEN: That's correct. Well, 102 is
9 the findings the court has to make, and 101 is the
10 procedure the department follows to get the emergency
11 hearing for the court to make the findings under 102.

12 THE COURT: Okay. Mr. Slate do you want to
13 respond?

14 MR. SLATE: I just think 262.109 applies to
15 all removals under that chapter, which is 262. It was
16 amended September 1st, 2017, and it was made to
17 purposely cover all removals, not just what it used to
18 be which was the exigent circumstances removal. They
19 had to leave that. It was purposely changed to cover
20 all removals.

21 THE COURT: Yeah. So why is it that
22 262.109 would not cover 262.101 or 102?

23 MR. NGUYEN: Because the court order
24 itself should be the notice in writing to the parents.

25 THE COURT: Well, that's notice that there

1 was an adversary hearing. It's not notice that --

2 MR. NGUYEN: Well, it is the notice that
3 was -- that the law enforcement have to rely upon in
4 order to remove the kids in the first place. There was
5 a court order.

6 THE COURT: But you're saying that TDFPS
7 cannot, without law enforcement or a court order, remove
8 kids?

9 MR. NGUYEN: No, no. I didn't say that,
10 Judge. That gives the department the authority to -- by
11 the court to take possession of the child. And with the
12 showing of that court order to the parents, that's the
13 written notice.

14 MR. SLATE: Judge, the court order doesn't
15 give the reason why they are having their kids removed.
16 The notice requirement in 226.109 makes them say what
17 the reasons are for having their kids removed. They are
18 two different kind of things.

19 THE COURT: The way I read 262.109 is that
20 it does cover the others; and it requires if there is
21 not going to be notice for those other two, there has to
22 be a showing that parents couldn't be located, it's Baby
23 Moses, or some other good cause with the burden being on
24 the agency, and I don't know that that evidence was
25 presented at the emergency. I'm open to looking at it.

1 I haven't seen the transcript.

2 MR. NGUYEN: And I think in an emergency
3 hearing, of course, the only thing the fact finder could
4 rely upon is the caseworker's affidavit.

5 THE COURT: Or the caseworker's testimony.

6 MR. NGUYEN: Yes.

7 THE COURT: All right. So I'm going to
8 allow the question.

9 Q. (BY MR. SLATE) Now, sir, I want to get
10 something straight. Your testimony here today is that
11 you believe there needed to be a removal of the children
12 on September 19th because the children were in danger
13 that day, right?

14 A. Yes.

15 Q. When did you come to that conclusion in your
16 head that these children were in danger?

17 A. When I found out they were back in the
18 residence.

19 Q. Which was when?

20 A. On the 18th.

21 Q. And so do you know of any way -- first off, why
22 did you not go to the court on September 18th to seek
23 removal if you thought they were in danger then?

24 A. Because I was directed to -- I was directed to
25 be at legal first thing in the morning of the 19th.

1 Q. Who directed you?

2 A. My supervisor, based on a conversation from a
3 program director.

4 Q. So did you express to your supervisor or
5 program director you believe the children were in danger
6 on September 18th?

7 A. It was a conversation that we both --

8 MR. SLATE: Objection, Your Honor.
9 Nonresponsive.

10 THE COURT: Yeah. Did you express to the
11 supervisor or program director that you believe the
12 children were in danger on September 18th?

13 A. Yes.

14 Q. (BY MR. SLATE) Okay. And do you know of any
15 way that CPS can remove children when they are in
16 danger?

17 A. Do I know of any way?

18 Q. Right.

19 THE COURT: You mean without a court order
20 or with a court order?

21 MR. SLATE: Any ways that he knows of,
22 Judge.

23 A. Notice of removal.

24 Q. (BY MR. SLATE) And that means going and
25 getting them without a court order?

1 A. Right.

2 Q. Could you have done that in this case if you
3 thought they were in danger?

4 A. Could have.

5 Q. But you didn't?

6 A. Yes.

7 Q. Because you didn't think they were really in
8 danger or they were just kind of in danger? What level
9 of danger were we talking about?

10 A. Danger, as far as back in the home of
11 caregivers who could've potentially harmed the children.

12 Q. What does the word "danger" mean to you, sir?

13 A. Danger: Unsafe, imminent.

14 Q. Anything else?

15 A. That's --

16 Q. You thought these kids were in an imminent,
17 unsafe condition or place; imminent, right?

18 A. Yes.

19 Q. Meaning right then and there, it could happen
20 any minute?

21 A. Anything could've happened, sure.

22 Q. What time of the day on the 18th did you come
23 to this conclusion these kids were in imminent danger?

24 A. When I found out they were back in the
25 residence.

1 Q. What time of the day was that?

2 A. I can't recall.

3 Q. Was it in the morning or afternoon?

4 A. It may have been -- may have been the morning.

5 Q. Was it about 2 o'clock or in the morning?

6 A. I can't say exactly what time it was.

7 Q. Well, when you find out that these kids are in
8 imminent danger, your first reaction was to wait until
9 the morning?

10 A. Well, again, like I said, I have to staff the
11 case with my supervisor.

12 Q. You're not allowed to go and do a removal
13 without it, without talking to your supervisor if you
14 think the kids are in imminent danger?

15 A. That's protocol. I do have to notify my
16 superior.

17 Q. When you notified your superior, did your
18 superior think that the kids were in imminent danger?

19 A. To the point where we needed to be in legal.

20 Q. I'm asking you: Did she think they were in
21 imminent danger when you told her what you knew?

22 A. Yes.

23 Q. So now we have two people at CPS thinking the
24 child is in imminent danger. What level do you have to
25 go to with CPS to get to someone who can authorize an

1 emergency removal?

2 A. Again, program director.

3 Q. Okay. So did y'all take it to the program
4 director?

5 A. Yes. There was a conversation that she had
6 with the program director.

7 Q. Did the program director also think that these
8 kids were in imminent danger?

9 A. Yes.

10 Q. And yet nobody went and picked them up on
11 September 18th to protect these children?

12 A. No.

13 Q. Why?

14 A. Because I was directed to be in court.

15 Q. Well, what was the imminent danger we were
16 worried about?

17 A. That the children were back in the residence.

18 Q. Is it not DFPS's job to protect children from
19 imminent danger?

20 A. It is.

21 Q. Did it fail at its job?

22 A. No.

23 MR. NGUYEN: Objection. Argumentative.

24 THE COURT: No, that's overruled.

25 Q. (BY MR. SLATE) Every single hour that went by,

1 how were these kids able to maintain their lives while
2 they were in this imminent danger?

3 A. What was the question?

4 Q. Every single hour that went by after you found
5 out they were in imminent danger on September 18th, how
6 was it the children were able to maintain their lives?

7 A. They were in the residence of their parents.

8 Q. Because you came down here and testified in
9 front of this court under oath, under the penalty of
10 perjury, that if this court didn't grant you that order
11 to remove those kids, they would be harmed, right?

12 MR. NGUYEN: Objection, Your Honor. Not
13 testified as to anything that occurred in an emergency
14 hearing. I believe he pled the Fifth.

15 THE COURT: He pled the Fifth at the
16 emergency hearing?

17 MR. NGUYEN: No. Here regarding any
18 testimony that was given at the emergency hearing.

19 THE COURT: Okay. I didn't understand.
20 Looking at the question, I'm not sure what you meant
21 when you said, "When you came down here and testified
22 under oath," Mr. Slate, were you saying at the emergency
23 hearing or are you talking about earlier today?

24 MR. SLATE: Emergency hearing.

25 THE COURT: Okay. That's what I thought.

1 MR. SLATE: The only way they could've
2 gotten the court order is if the kids were in imminent
3 danger so we couldn't have had a show-cause hearing.

4 MR. NGUYEN: We're assuming what statements
5 were made at the emergency hearing without actually
6 knowing what statements were made.

7 THE COURT: No, I think that's why he's
8 asking. He can say that wasn't the case, that was the
9 case or whatever. But the question was: "You came down
10 here and testified in front of this court, under oath,
11 under the penalty of perjury, that if this court didn't
12 grant you the removal of the kids, they would be
13 harmed"; true or not true?

14 A. Yes.

15 Q. (BY MR. SLATE) Well, sir, how can that be when
16 at least 24 hours went by after you, based upon your
17 testimony, found out the kids were in imminent danger?

18 A. Well, because, again, I was informed I needed
19 to be at legal the following morning.

20 Q. So what does "imminent" mean?

21 A. Immediate.

22 Q. So you are telling this court right now these
23 kids were are in immediate, imminent danger, not only on
24 September 18th, but also when you came down here to
25 court and stood up in front of the judge and swore under

1 oath on September 19th, right?

2 A. That they were in danger?

3 Q. Right?

4 A. Yes.

5 Q. And then your testimony was that you've got the
6 court order at about 12:30 on the afternoon of the 19th,
7 right?

8 A. Yes.

9 Q. But you didn't show up at the Bright residence
10 to rescue these children from imminent danger until
11 7:30 at night, right?

12 A. Yes.

13 Q. Did you think that's in the kids' best interest
14 who are facing imminent danger, a seven-hour delay?

15 A. Waiting on law enforcement.

16 Q. For seven hours?

17 A. No. I did not immediately go to the residence,
18 but I did go back to the office.

19 Q. What time did you call law enforcement, sir?

20 A. It may have been around 4ish, 4:20, 4:30 around
21 about.

22 Q. So four hours went by without even a call to
23 law enforcement while these kids are facing imminent
24 danger, right?

25 A. Yes.

1 Q. And it just so happens you don't call until
2 4:30, but that would make it so law -- what time did you
3 tell law enforcement to meet you at the Bright
4 residence?

5 A. I was looking for law enforcement to come
6 immediately.

7 Q. What time did you tell them to meet you at the
8 Bright residence? Sir, remember you're under oath and
9 there are records of your call. Tell me what time did
10 you tell them to meet you?

11 A. I don't recall.

12 Q. Well, how did you know they couldn't meet you
13 if you don't recall what time you told them to meet you?

14 A. How I do know what time?

15 Q. Yeah. You're saying you're sitting at your
16 office at 4:30 in the afternoon with an order ordering
17 these kids into your care and custody, and you can't
18 tell us what time you told law enforcement to meet you?

19 A. I called law enforcement when I was in the
20 subdivision. I didn't call them when I was at the
21 office.

22 Q. You said you called at 4:30, sir?

23 A. Roundabout, roughly.

24 Q. Were you in the subdivision at 4 o'clock, 4:30?

25 A. Maybe --

1 Q. Did you sit outside their subdivision for three
2 hours?

3 A. Yes. Yes. About two. Maybe two. Waiting on
4 law enforcement, yes, by the mailbox.

5 Q. So you -- at 4:00 or 4:30, you're outside the
6 neighborhood of the Brights and you wait until 7:30,
7 right?

8 A. Right.

9 Q. You then leave that spot and go and do the
10 removal on your own?

11 A. Yes.

12 Q. To which law enforcement doesn't show up for
13 another 30 to 40 minutes?

14 A. Roughly, about 30 minutes.

15 Q. And your testimony is today, you could call
16 them at 4:30 and they didn't show up to the Bright
17 residence until nearly 8:00?

18 A. Roundabout.

19 Q. You believe a police officer is going to come
20 in and agree with that assessment?

21 A. Agree with what assessment?

22 Q. What you just said; that you called them and
23 talked to them and requested an officer and it took them
24 four hours to respond?

25 A. I'm not saying four hours.

1 Q. Three and a half?

2 A. Yes.

3 Q. Did you try 911 to try to help protect these
4 kids from imminent danger?

5 A. That's the number you call.

6 Q. Did you call 911?

7 A. Yes.

8 Q. And you're saying the response time was three
9 and a half hours?

10 A. Yes.

11 Q. What police officer showed up?

12 A. I can't remember his name.

13 Q. What agency was he with?

14 A. I believe it was the sheriff's department.

15 Q. How many calls did you make to the police that
16 day?

17 A. I called about three times.

18 Q. You know under that spoliation notice we gave
19 you, you were to preserve all your phone records, right,
20 and not to delete anything off of your phone, all phone
21 calls and everything else?

22 A. Yes.

23 Q. You got them all?

24 A. I got them.

25 Q. Can you pull it up now and show us?

1 A. It's --

2 Q. Can you walk over there and go get it and show
3 us so we can see your call log for September 18th,
4 September 19th?

5 THE WITNESS: Can I walk over there?

6 THE COURT: Sure.

7 Q. (BY MR. SLATE) Did you delete your call log?

8 A. Not at all.

9 Q. Friday is the day I sent you the spoliation
10 notice, right?

11 A. Yes.

12 Q. You're saying that calendar log stops on
13 Friday?

14 A. That's as far as I can go on here, but I didn't
15 delete or erase anything.

16 Q. Is that your personal phone or a CPS phone?

17 A. CPS phone.

18 Q. Now, sir, you're saying you sat out there
19 outside the neighborhood for three and a half hours
20 waiting for law enforcement, right?

21 A. Roundabout, roughly, yes, sir.

22 Q. Why didn't you just wait another 30 minutes?

23 A. The hour was -- the time was already -- it was
24 a long time and the time was passed, basically.

25 Q. Well, sir, you're saying you were afraid for

1 your personal safety because of Dillon Bright, right?

2 A. Yes.

3 Q. And yet you went ahead and overcame that fear?

4 A. Well, law enforcement -- dispatch already had
5 my information. They knew what address I was going to,
6 and that's how he knew which residence to come to.

7 THE COURT: Sir, please listen to the
8 question and answer it.

9 THE WITNESS: Okay.

10 THE COURT: You overcame your fear, yes or
11 no?

12 A. Yes.

13 Q. Now, sir, you say that you did not
14 intentionally wait until after 5 o'clock to have these
15 children removed, right?

16 A. Right.

17 Q. And yet you've now stated under oath you did
18 intentionally wait four hours before even going to their
19 house and calling law enforcement, right, yes or no?

20 A. Yes.

21 Q. And the day before you had sent a text message
22 saying you would be there at 5:00 p.m.?

23 A. Yes.

24 Q. The same time you had staffed the case with
25 your supervisor and program director who had instructed

1 you to go to legal on the 19th, right?

2 A. Right.

3 Q. And you want us to believe that you didn't
4 intentionally go after 5:00 p.m.?

5 A. Correct.

6 Q. But you want us believe these children were,
7 according to you, in imminent danger and you had a
8 removal order signed at 12:30 in the afternoon?

9 A. Yes.

10 Q. Do you think that makes any sense?

11 A. Yes.

12 Q. What sense?

13 A. In the event when I left court, I had to go
14 back to our office to ensure that I had car seats. I
15 had to do some stuff in Impact.

16 Q. Sir, you knew the day before you were coming to
17 go get the order. Why didn't you do all that on Tuesday
18 when you weren't protecting the children?

19 MR. NGUYEN: Objection. Argumentative.

20 THE COURT: Overruled.

21 A. Why didn't I do?

22 Q. (BY MR. SLATE) Why didn't you go to legal on
23 Wednesday morning with car seats, with everything you
24 needed so that you could rush and protect these children
25 at 12:30 on Wednesday, the 20 -- the 19th?

1 A. Because I was instructed to be at legal on the
2 19th.

3 Q. Were you instructed to be there not with car
4 seats? Who told you -- Ms. Edwards or the program
5 director -- not to show up with car seats on the 19th?
6 Which one of them?

7 A. My supervisor.

8 Q. She told you not to bring car seats?

9 A. No, she didn't say not --

10 Q. Did she say don't be prepared to take those
11 kids as soon as you get the order?

12 A. No.

13 Q. Did she tell you -- did that lady back there
14 tell you that you needed to wait until 4:30 in the
15 afternoon before you went and tried to remove them?

16 MR. NGUYEN: Objection. Argumentative.

17 THE COURT: That's overruled.

18 A. No.

19 Q. (BY MR. SLATE) Did that lady back there, did
20 your supervisor, did she tell you that you needed to
21 wait until after 5:00?

22 A. No.

23 Q. Did she authorize you to wait for four hours
24 after getting the order before you removed those kids?

25 A. Well, she knew, yes.

1 Q. Did she authorize it?

2 A. For me to wait?

3 Q. Four hours?

4 A. Yes.

5 Q. Did she know?

6 A. Yes.

7 Q. That you were going to wait four hours?

8 A. Yes.

9 Q. While these kids were in imminent danger?

10 A. Yes, sir.

11 Q. And she authorized it?

12 A. Yes.

13 Q. Ms. Edwards?

14 A. Yes.

15 Q. She's responsible for you waiting those four
16 hours?

17 A. I'm not saying she's responsible.

18 Q. Why not? She's the one telling you what to do,
19 right?

20 A. Yes.

21 Q. She told you to wait until 4:30?

22 A. Yes.

23 MR. SLATE: I pass the witness, Judge.

24 **CROSS-EXAMINATION**

25 **BY MS. PROFFITT:**

1 Q. Mr. Jones, you prepared an affidavit in this
2 case, did you not?

3 A. Yes, ma'am.

4 Q. Earlier, Mr. Slate was asking you about your
5 knowledge of the breastfeeding issue. Do you recall him
6 asking you that?

7 A. Yes, ma'am.

8 Q. You told him you didn't recall that that issue
9 had been brought up. Is that still your testimony?

10 A. Yes, ma'am.

11 Q. So when you signed an affidavit on
12 September 29th, that would be based on your knowledge
13 and your information, correct?

14 A. Yes.

15 Q. And so if your affidavit on page 8 states that
16 "on August 9th, 2018, that investigative worker Lavarvia
17 Jones spoke with Michael and Melissa at the Fraziers'
18 residence. Michael informed me that a pastor's friend
19 allowed Melissa to stay in the home that he owns near
20 Baytown so that Melissa can be close to" -- actually, it
21 says to "Dillon" -- "to breastfeed." I assume you meant
22 for her to breastfeed the child, not her husband?

23 A. Yes.

24 Q. "Melissa and Dillon asked me if Melissa could
25 be considered to stay with his mom at the residence

1 because Melissa has to breastfeed"?

2 A. Yes.

3 Q. So you did have knowledge that breastfeeding
4 was an issue, correct?

5 A. Yes.

6 Q. Because I assume you copied this out of your
7 case notes for this case; your affidavit?

8 A. Yes.

9 Q. And then you were asked -- well, they then
10 informed you they needed to come up with some other
11 people to help with the kids, correct?

12 A. Correct.

13 Q. And that was as far back as August 9th?

14 A. Roughly, yes, ma'am.

15 Q. And because in your affidavit, you say that on
16 August 9th: "They informed me that they possibly want
17 the PCSP at another house. Worker encouraged the family
18 to participate in a family team meeting in which the
19 family agreed," correct?

20 A. Yes, sir.

21 Q. And y'all set that up for August 14th, 2018,
22 correct?

23 A. Yes.

24 Q. Now, in your family team meeting, Mr. Slate
25 showed you the little clip-out that said you were going

1 to have a decision by Friday, August 17th, and that the
2 change of residence would take place on Sunday,
3 August 19th, correct?

4 A. Yes.

5 Q. You actually included that same exact language
6 in you're affidavit, didn't you?

7 A. Yes.

8 Q. You swore in an affidavit that the decision was
9 being made by February (sic) 17th, and that the change
10 of residence would take place on Sunday, August 19th,
11 correct?

12 A. Yes.

13 Q. But you didn't do those things, correct?

14 A. Yes.

15 Q. You also testified that -- or, I'm sorry -- in
16 your affidavit, you state that on August 20th, you
17 received a telephone call from Ms. Bright and she asked
18 if the agency was able to approve the Jesters for the
19 new parental child safety placement. Do you remember
20 that?

21 A. Yes, ma'am.

22 Q. You said that you informed her that you didn't
23 have approval at that time because of there being
24 concerns with moving the child who has suffered with
25 multiple serious injuries?

1 A. Yes.

2 Q. But nowhere in the text messages when you-all
3 are going back and forth about whether or not it's okay
4 to go to the Fraziers, you never once say, I'm
5 concerned -- there is some concerns about multiple
6 injuries, correct?

7 A. Correct.

8 Q. So on page 6, when she asks you: "Are you okay
9 with that," you see up there at the top?

10 A. Yes.

11 Q. It says: "Missy plans to meet us at the
12 hospital, discharge us and bring us to Deloris' house.
13 Are you okay with that?" You see that?

14 A. Yes.

15 Q. You responded: "Okay, that should be fine,"
16 correct?

17 A. Correct.

18 Q. Not just, "That should be fine." You said
19 "Okay, that should be fine"?

20 A. Yes.

21 Q. So she asks: "Is it okay?" And you say,
22 "Okay," correct?

23 A. "That should be fine," yes.

24 Q. But later, you try to cut it up to, oh, you
25 just said it "should be fine," that they shouldn't have

1 taken that as an "okay" to travel with the kids.

2 A. Right.

3 Q. But that's not what you said in this message,
4 correct? She says: "Are you okay with that?" You
5 said: "Okay, that should be fine."

6 A. Yes.

7 Q. Can you explain to this court how that could be
8 anyway construed as anything but an acknowledge that it
9 was okay?

10 A. "Should be fine," like I repeated earlier. Not
11 a definite.

12 Q. Isn't it okay? Isn't "okay" to "is that okay,"
13 and the answer: "Okay." Isn't that affirming that what
14 she's asking you is okay?

15 A. "Okay," and she put a lot in this text.
16 Missy's plans, come and meet us at the hospital,
17 discharge us, and bring -- "Are you okay with that?" So
18 my response is: "Okay, that should be fine." It was
19 not a definite, giving them --

20 Q. So why didn't you say that? Why didn't you
21 say, "Okay, that should be fine, but let me check with
22 my supervisor first"?

23 A. In which I did because --

24 Q. Really? Because --

25 MS. PROFFITT: Objection, Your Honor.

1 Nonresponsive.

2 THE COURT: Sustained.

3 Q. (BY MR. PROFFITT) Sir, what you say is, "Okay
4 that should be fine," and then you follow up with, "We
5 did consult with legal, and we don't have grounds for
6 removal," correct?

7 A. Yes.

8 Q. And that's on August 22nd these texts are going
9 back and forth?

10 A. Yes.

11 Q. You don't say anywhere anything on that day
12 about the fact that you're waiting for a program
13 director or anybody else to approve it, correct?

14 A. Right. Not in this text, no.

15 Q. So while you're worried about this child's
16 fragile condition, you're sending them off to one
17 direction, and then you're calling them back and making
18 them go somewhere else, correct?

19 A. Yes.

20 Q. I want to be clear because my client -- there
21 are no allegations against my client, are there?

22 A. Correct.

23 Q. Why in the world couldn't you have placed the
24 children with Mr. Bright and had Mrs. Bright stay out of
25 the home?

1 A. There were no allegations against Dad.

2 Q. So why couldn't you have placed the children
3 with Dad, made Mom stay elsewhere, and left these
4 beautiful children in their home?

5 A. Well, because as to the same reason why we
6 don't have explanation for the injury. Err on the side
7 of caution.

8 Q. So let's be clear: We know for a fact that
9 this child had two injuries on his head, correct?

10 A. Correct.

11 Q. We know for a fact that both of these injuries,
12 on the day that he was admitted into the hospital, were
13 swollen, correct?

14 A. Yes.

15 Q. We know that Dad was not home during the window
16 that the child got hurt, correct?

17 A. Correct.

18 Q. So if there is an inconsistency, Dad wouldn't
19 be the one making any inconsistent statements; it
20 would've been Mom, right?

21 A. Right.

22 Q. So why in the world did the agency need to take
23 my client's children away from him?

24 A. I don't have an answer.

25 Q. The black eye and the gash on the face could've

1 been avoided if they were with their Dad, right?

2 MR. NGUYEN: Objection. Speculation.

3 THE COURT: Overruled.

4 Q. (BY MS. PROFFITT) Correct?

5 A. The question -- the black eye could've been
6 avoided?

7 Q. If the kids would've been placed with their
8 father?

9 A. Possibility.

10 Q. And that Charlotte had a horrific diaper rash
11 after she left foster care as well, correct?

12 A. I didn't know anything about that.

13 Q. Ms. Frazier didn't send you a picture of the
14 diaper rash?

15 A. I don't recall.

16 Q. Did you tell the foster family that this child
17 had an allergy to dairy?

18 A. Yes.

19 Q. So while in CPS care, was she fed dairy?

20 A. To my knowledge, no.

21 Q. Now, in addition to the cut on the face and the
22 black eye, Dillon suffered a lot of harm between
23 July 18th -- I'm sorry, not Dillon -- Mason between
24 July 18th and September 19th as well, correct?

25 A. I'm not aware of any harm.

1 Q. Okay. So let's start with this: He gets
2 discharged from the hospital for the first time on what
3 day?

4 A. July -- for the first time?

5 Q. Correct.

6 A. 24th, 25th.

7 Q. And at that time, the instructions were very
8 clear that this child was to be kept calm, correct?

9 A. I don't recall.

10 Q. You don't know whether or not the medical
11 records for that child required him to be kept calm?

12 A. In Mom and Dad's residence home?

13 Q. No. In the doctor's -- you were here when the
14 doctor testified this child was to be kept calm on
15 discharge, correct?

16 A. Can't recall.

17 Q. And during the time that he was with the
18 paternal grandmother, isn't it true that complaints were
19 made that the child was irritable and upset and couldn't
20 be consoled while he -- because he wasn't being
21 breastfed?

22 A. When the child was placed with paternal
23 grandmother?

24 Q. Paternal grandmother.

25 A. Paternal grandmother. There were complaints

1 about --

2 MR. NGUYEN: Objection. Hearsay.

3 MS. PROFFITT: I can rephrase it, Your
4 Honor.

5 Q. (BY MS. PROFFITT) We listened to Melissa on a
6 tape, a recording of the family team meeting, correct?

7 A. Yes.

8 Q. And she made complaints that Mason was not
9 consolable, that he was up 15, 17, 21 times during the
10 night, correct?

11 A. Yes.

12 Q. And she told you-all during that meeting that
13 as a result of that and the swelling, he had to go back
14 to the hospital and be re-stitched, correct?

15 A. I don't recall her saying as a result of that.

16 Q. And then he had to -- he continued to be in
17 that home, correct?

18 A. He continued to be in Missy's home.

19 Q. In the paternal grandmother's home, correct?

20 A. Yes.

21 Q. And then on August -- August 9th, per your
22 affidavit, Dillon and Melissa tell you that this child
23 needs to be breastfeed, correct?

24 A. Yes.

25 Q. And after that, the child ends up having to

1 have a hole burrowed into his skull because the pressure
2 is building rather than decreasing, correct?

3 A. I'm sorry, repeat the question?

4 Q. Was his skull then -- was there a hole burrowed
5 into his skull to release the pressure on his brain?

6 A. Yes.

7 Q. And that was after he had already gone back in
8 for weeping and resuture of the same injury, correct?

9 A. On the 14th, I believe, is when -- the day of
10 the family team meeting when he is readmitted into the
11 hospital for the --

12 Q. That was for the shunt, correct?

13 A. Correct.

14 Q. But before that, he was admitted into the
15 hospital?

16 A. Yes.

17 Q. For a hole to be drilled into his skull,
18 correct?

19 A. Correct.

20 Q. And each time, from the very first time he was
21 discharged to the last time he was discharged, it was
22 very clear in his medical records that he was to be kept
23 calm, correct?

24 A. Yes.

25 Q. And although this family told you repeatedly

1 that the child was not be able to be kept calm and
2 concealed because he wasn't being breastfed, you made no
3 changes to the plan to allow that to happen throughout
4 the night, did you?

5 A. Yes.

6 Q. You did make plans?

7 A. Yes.

8 Q. What plans did you make so that Mom could
9 breastfeed throughout the night?

10 A. Well, the PCSP allowed Mom to be in the
11 residence to breastfeed Mason. Those arrangements were
12 made.

13 Q. But, sir, the arrangements included that
14 Ms. Bright had to leave at nighttime, correct?

15 A. Yes.

16 Q. So back to my question: What arrangements did
17 CPS make to address the concerns of this child being
18 able to be breastfed throughout the night? It's okay to
19 say none.

20 A. I don't know.

21 Q. You don't know of any plans that were made for
22 that breastfeeding to take place?

23 A. There may have been a discussion between Missy
24 and my supervisor regarding the breastfeeding.

25 Q. Now, in your affidavit, you state that on

1 August 28th -- well, let me back up. Before
2 September 19th, when was the last time you laid eyes on
3 these children prior to that day?

4 A. It was sometime in August.

5 Q. If I were to refresh your memory, do you think
6 it was the team meeting when the children were present
7 in the Frazier home and the whole family was there and
8 the kids were there on August 14th?

9 A. Yes.

10 Q. So from August 14th until September 19th, no
11 one from the agency laid eyes on these children; is that
12 correct?

13 A. Correct.

14 Q. And that would be a violation of your PCSP,
15 correct? Is that correct? Let me back up. You'd
16 testified that you did not see the children from
17 August 14th until September 19th, correct?

18 A. Correct.

19 Q. Do you know whether or not any of these ladies
20 back here bothered to check out the children between
21 August 14th and September 19th?

22 A. No.

23 Q. In fact, if they had, those notes would be in
24 this affidavit as well, wouldn't they?

25 A. Yes.

1 Q. And after everything goes down with the removal
2 and -- I'm sorry, with the incident at the hospital and
3 the kid, the child being brought back and forth and
4 taken back to Deloris, Mom is texting you: "Read
5 message above where you indicate you would move -- we
6 could move yesterday. You called to tell us about the
7 PD signing off at 1:11 p.m. yesterday. This was after
8 we were out of the hospital packed." That's
9 August 23rd. She then sends you another text on
10 August 23rd: "Any update?" You respond back about an
11 hour and a half later: "Nothing yet." She's saying:
12 "What is it you're actually waiting on, a signature? We
13 have a doctor's appointment tomorrow two miles from
14 Deloris -- a doctor's appointment two miles from Deloris
15 tomorrow. Two miles. It would be ridiculous to ask us
16 to be all the way there with everything loaded in our
17 truck. We've done everything you've asked of us, and
18 all we're asking is to expedite a signature that was
19 supposed to have been done by this past Monday. What
20 can be done to ensure we move tomorrow?" You don't
21 respond. "Since we can't do anything about this, what
22 can we do to set up a meeting with family services?"
23 MR. NGUYEN: Objection, Your Honor. Best
24 evidence rule. Document speaks for itself.
25 THE COURT: Well, what is the question?

1 Q. (BY MS. PROFFITT) Sir, what I'm trying to find
2 out is during this window of time from discharge from
3 the hospital until your next entry on August 28th, what
4 were you doing to ensure that this child was being taken
5 care of?

6 A. I mean, like I said before, I was -- the
7 parents -- there had already been a parental child
8 safety plan which we had already selected a caregiver to
9 assist, to make sure that the child was taken care of
10 and had his needs.

11 Q. Well, and in these text messages, you don't say
12 anything about we're concerned about serious injuries.
13 If fact, you say "I really hope she approves the PCSP
14 soon"?

15 A. Right.

16 Q. And so this goes on. Mrs. Bright is texting
17 you on the 22nd, 23rd, 24th. 24th: "Any update?"
18 Still: "Not yet," correct?

19 MR. NGUYEN: Objection, Your Honor. I'm
20 not hearing a question.

21 Q. (BY MS. PROFFITT) Is that correct?

22 A. You mean about the messages?

23 Q. Correct. She sends you another message on
24 Friday the 24th: "Any update," correct?

25 A. Yes.

1 Q. And you respond: "Not yet."

2 A. Yes.

3 Q. She asked you: "My husband sent you a list of
4 questions. Can you call him back?" And what's your
5 response?

6 A. "I will call him. I'm on another case."

7 Q. Did you call him?

8 A. I don't think we spoke until August 28th.

9 Q. So on August 24th, she's telling you: "My
10 husband is trying to get in touch with you. He has
11 questions. Please call him." You say: "I will. I'm
12 on another case at the moment." But it's not for four
13 days before you actually speak to him; is that correct?

14 A. Yes.

15 Q. Now, you testified that he was very irate with
16 you on the phone, raising his voice, et cetera. I just
17 want to make sure that's what you say happened on that
18 call?

19 A. His tone was in an aggressive manner, yes. His
20 tone was -- yes.

21 Q. Was this a tone of "I'm going to come beat you
22 up," or was this a tone of, "What's going on with our
23 children? It's been six days and we don't have any
24 answers"? The first or the latter?

25 A. The latter.

1 Q. And if I were to tell you -- you know they
2 recorded pretty much everything you guys have said and
3 done with them, right?

4 A. Yes.

5 Q. And if I were to tell you there was not only --
6 not only on the phone with you, but there was someone
7 standing right there beside him when he was talking to
8 you on the phone, would that surprise you?

9 A. No.

10 Q. And isn't it true that at this point, he told
11 you he had consulted an attorney; they were no longer
12 going to comply with the PCSP?

13 A. He said that they were going to no longer
14 comply with the agency.

15 Q. And, in fact, he told you -- you told him at
16 the removal that you remembered talking to him. You
17 talked about his tone of his voice. And you said -- you
18 were complaining -- "You were not complying. We're not
19 doing this anymore, so I'm taking my children." You
20 acknowledged that that's what he told you on August
21 28th; are you aware of that?

22 A. Okay. What did he say?

23 Q. When Dillon was talking to you at the date of
24 the removal, he was telling you that he and you talked
25 and that they decided that that weekend, the weekend of

1 the 25th, 26th of August, that they were making a
2 decision, and you respond: "Okay. So I did reach out
3 to my supervisor and I let her know about it and we were
4 going to -- "

5 MR. NGUYEN: Objection, Your Honor. She's
6 questioning on a transcript that's not in evidence or a
7 document that's not in evidence, Judge.

8 Q. (BY MS. PROFFITT) I can play it, but I just
9 want to give you one last chance to acknowledge. Isn't
10 it true you acknowledged that after he told you he
11 wasn't going to comply and he was taking his children,
12 that you staffed it with your supervisor to decide
13 whether or not to take it to legal?

14 A. When I spoke to Mr. Bright that day, he did not
15 tell me that he was going to go pick them up. He told
16 me he was not going to comply. So I didn't find out
17 that the children were taken until the 18th.

18 Q. Why?

19 MR. NGUYEN: Objection. Vague. Why what?

20 Q. (BY MS. PROFFITT) Why didn't he find out until
21 the 18th that the children weren't in their placement?

22 A. Dad was no longer cooperating with the agency.

23 Q. Did you say something different during the
24 removal? Did you acknowledge at the removal that you
25 knew he had taken his kids on the 28th?

1 A. I didn't know until after the fact.

2 Q. What does "after the fact" mean?

3 A. After August 28th.

4 Q. How long after August 28th did you learn that
5 he had his children in his care?

6 A. September 18th.

7 MS. PROFFITT: Your Honor, at this time I'd
8 like to play the tape regarding this issue. It's been
9 admitted into evidence as Exhibit 40.

10 THE COURT: Okay.

11 MS. PROFFITT: Starting at 3:11.

12 (Respondent Mother's Exhibit No. 40
13 published)

14 Q. (BY MS. PROFFITT) So you acknowledge that
15 during that phone call, you knew he wasn't complying and
16 he was taking his children and so you staffed it with
17 your supervisor; isn't that what you just told him?

18 A. Yes. My indications were that he was going to
19 take them; but at that point, he hadn't taken his
20 children.

21 Q. Well, if I were to tell you they had been with
22 him since the 25th, would that surprise you?

23 A. Ms. Bright mentioned it on yesterday.

24 Q. So when he makes all these -- when he's got the
25 tone of voice with you, when you're of the belief that

1 he's going to stop working with you, he's not going to
2 comply and he's going to take his children, did you run
3 out to the PCP (sic) placement to find out if the
4 children were safe?

5 A. No.

6 Q. Did you do that on the 29th of August?

7 A. No.

8 Q. How about the 30th of August?

9 A. No.

10 Q. Did you go on the 31st of August?

11 A. No.

12 Q. How about September 1st? These kids are in
13 danger. Have you gone to check on them?

14 A. No.

15 Q. Do you go on September 2nd?

16 A. No.

17 Q. September 3rd?

18 A. No.

19 Q. September 4th?

20 A. No.

21 Q. September 5th?

22 A. No.

23 Q. September 6th?

24 A. No.

25 Q. September 7th?

- 1 A. No.
- 2 Q. September 8th?
- 3 A. No.
- 4 Q. September 9th?
- 5 A. No.
- 6 Q. September 10th?
- 7 A. No.
- 8 Q. September 11th?
- 9 A. Do we have to continue with this?
- 10 Q. September 11th?
- 11 A. No.
- 12 Q. These kids are in danger. Did you go get them
- 13 on September 11th?
- 14 A. I went on the 19th.
- 15 Q. So you didn't go on the 11th?
- 16 A. No.
- 17 Q. And you didn't go on the 12th, correct?
- 18 A. Correct.
- 19 Q. And you didn't go on the 13th, correct?
- 20 A. No. Correct.
- 21 Q. Or the 14th, correct?
- 22 A. Correct.
- 23 Q. Or the 15th, correct?
- 24 A. Correct.
- 25 Q. Or the 16th, correct?

1 A. Uh-huh.

2 Q. Or the 17th, correct?

3 A. Correct.

4 Q. Or the 18th?

5 A. Right.

6 Q. Just to be clear: At the very minimum, you
7 knew for sure that these children were no longer with
8 the maternal -- I'm sorry -- paternal grandmother for
9 sure. No question by the 18th, correct?

10 A. Right. Yes, for sure by the 18th.

11 Q. And did your supervisor authorize you at that
12 point to go get those kids?

13 A. No.

14 Q. Why not?

15 A. I was directed to be at legal first thing in
16 the morning.

17 Q. How dangerous was the situation that you could
18 sit on it for over 36 hours?

19 A. Well, I didn't know that the children were
20 taken back to the home until September 18th.

21 Q. But you had reason to believe as far as back as
22 August 28th, correct?

23 A. Yes.

24 Q. Now, in your affidavit, you say that on
25 September 19th, you contacted Sandy Russell to follow up

1 on the hematology. Do you recall that?

2 A. Yes, ma'am.

3 Q. That she stated there was no evidence of any
4 blood problem. When you talked to Sandy, did you ask
5 her about the hematology report that you had been given?

6 A. No.

7 Q. Did you remind her that there was a hematology
8 investigation done on this child?

9 A. Yes.

10 Q. And so when you reminded her of it, she just --
11 what did she say? Where was it?

12 A. She said there were no indications of Von
13 Willebrand disease.

14 Q. So you relied on a social worker to tell you
15 that there were no indications of the disorder even
16 though that is part of this child's medical records,
17 correct?

18 A. Yes.

19 Q. And when you filed your affidavit on July 19th,
20 was it an accident that you didn't include the rest of
21 his medical records that had occurred from the 20th of
22 July to the 19th of September?

23 A. What was attached was what I thought was the
24 physician's statement.

25 Q. Sir, you want this judge to know the most

1 evidence he could possibly know before he decides to
2 take children from a parent, correct?

3 A. Yes.

4 Q. And you knew that this child had been in the
5 hospital the first time as well as two additional times,
6 correct?

7 A. Correct.

8 Q. So did you make sure that the evidence you were
9 giving this judge included everything that happened with
10 this child from July 18th to September 19th?

11 A. Yes.

12 Q. So where are the rest of the records then?

13 A. Our attorney has the physician's statement.

14 Q. Sir, I'm not talking about the physician's
15 statement. I'm talking about the fact that Ms. Sandy
16 Russell -- and I can tell she's the one who did it
17 because down at the bottom of the records, it shows that
18 she's the one that printed these out. It says:
19 "Printed by Rosinski-Russell, Sandra" on the bottom of
20 these records. It says that she printed them. So I
21 assume these came from her, right?

22 A. Yes.

23 Q. And it looks like up at the top that they were
24 faxed from TCH on 7/20/18, correct?

25 A. Correct.

1 Q. When you were down here at the court, why
2 didn't you provide the rest of the Texas Children's
3 records from July 20th up until September 19th?

4 A. That's all I thought I needed.

5 Q. So in these records, you know -- because you
6 were here when we were questioning the doctor -- that
7 there were recommendations to get to the bottom of what
8 was going on with this child, correct?

9 A. Yes.

10 Q. One was a skeletal survey, correct?

11 A. Correct.

12 Q. Do you think maybe the skeletal survey
13 information would've been a good thing for this judge to
14 be able to look at?

15 A. Yes.

16 Q. And "recommendations dilated" -- I'm not going
17 to go through all the words because I can't pronounce
18 them, but this is for the ophthalmology exam, right?

19 A. Yes.

20 Q. Did you provide this court the results of that
21 exam that show that the blood is in the left eye?

22 A. No.

23 Q. "Hematology consult given the extensive
24 intracranial bleeding." Do you think it would've been a
25 good idea to give this judge the hematology report so he

1 could see this child had a bleeding disorder?

2 A. Yes.

3 Q. But you didn't do that, right?

4 A. No.

5 Q. And then he was sent to go to Child Protective
6 Health Clinic for a follow-up examination and a repeat
7 in a couple weeks' time. Did you provide any of those
8 documents?

9 A. No.

10 Q. Do you think that would've been important, too?

11 A. Yes.

12 Q. Now, one of the first things on your affidavit
13 is, it says: "I have made reasonable efforts under the
14 circumstances to prevent removal of the child but
15 considering the immediate needs to protect the child,
16 removal of the child is necessary." You swore to that,
17 didn't you?

18 A. Yes.

19 Q. What reasonable efforts did you make to prevent
20 the removal of the child from his parents?

21 MR. NGUYEN: Objection. Asked and
22 answered. I believe we've covered this.

23 THE COURT: That's overruled.

24 Please answer.

25 A. What was the question?

1 Q. (BY MS. PROFFITT) What reasonable efforts did
2 you make to prevent removal of the children?

3 A. PCSP. We --

4 Q. Let me make this a little easier. I'll narrow
5 it down.

6 A. Okay.

7 Q. What did you do from August 28th, when you were
8 told that the PCSP was not going to be followed, to
9 September 19th? What reasonable efforts did you make
10 under the circumstances to prevent taking the children
11 from their parents?

12 A. Well, at that point, the PCSP had been violated
13 and back -- getting the children back in the home of the
14 alleged perpetrator, so.

15 Q. Sir, what did you do? You find out on
16 August 28th that they are going to violate the PCSP.
17 You have to make reasonable efforts before you just
18 remove the kids. You didn't run out on the 28th and
19 take the kids. You waited 23 days, correct?

20 A. Yes.

21 Q. So what reasonable efforts to stop removal were
22 made between the point you learned that they were no
23 longer going to comply, and the point that you were down
24 here in front of this judge saying, under oath: "I've
25 made reasonable efforts under the circumstances to

1 prevent removal of the child but considering the
2 immediate needs to protect the child, removal of the
3 child are necessary."

4 A. PCSP was violated.

5 MS. PROFFITT: Objection. Nonresponsive,
6 Your Honor.

7 THE COURT: Yeah, that's sustained.

8 Q. (BY MS. PROFFITT) What did you do between
9 August 28th and September 19th?

10 A. Staff the case with my supervisor regarding
11 this case.

12 Q. So are you telling this court that your
13 supervisor knew that these children were back with their
14 parents?

15 A. No.

16 Q. So what were you staffing with them? I mean,
17 you certainly weren't making reports to her for the --
18 how the kids were doing because you didn't know, right?

19 A. Right.

20 Q. So what were you staffing with her?

21 A. Basically, the last conversation we had with
22 Dillon regarding him not complying with the agency no
23 longer.

24 Q. And did you tell her he told you he wasn't
25 going to comply and he was going to bring his children

1 home?

2 A. I told her that what he told me; he was not
3 going to comply.

4 Q. And bring the children home?

5 A. What he told me is not comply.

6 MR. SLATE: Objection, Your Honor.
7 Nonresponsive.

8 MR. NGUYEN: I think it is responsive to
9 what he told her.

10 MS. PROFFITT: I'll rephrase it.

11 Q. (BY MS. PROFFITT) Did Dillon tell you that he
12 was not going to comply and that he was going to bring
13 his children home?

14 A. No.

15 Q. And did you tell that to Deloris when you were
16 explaining why you were taking the children?

17 MR. NGUYEN: Objection. Nonresponsive. He
18 responded "no" to the previous question.

19 THE COURT: Is "no" your answer?

20 THE WITNESS: Yes, sir.

21 Q. (BY MS. PROFFITT) So you didn't tell Deloris
22 that that's what he had told you?

23 A. I don't recall a lot of the -- no.

24 MS. PROFFITT: Your Honor, I would like to
25 direct us to Exhibit 40 at 47 minutes, 26 seconds.

1 THE COURT: All right.

2 (Respondent Mother's Exhibit No. 40
3 published)

4 Q. (BY MS. PROFFITT) So you knew on August 28th
5 that he was bringing his children home, and because you
6 had to go through a process, you left the children there
7 for three weeks; isn't that the truth?

8 A. I had an indication from the conversation of
9 the 28th that he would bring his children home.

10 Q. Yet, you did nothing for three weeks, correct?

11 A. Yes.

12 Q. You --

13 MS. PROFFITT: I'm going to let it go, Your
14 Honor. Pass the witness.

15 **CROSS-EXAMINATION**

16 **BY MR. LONGWORTH:**

17 Q. Did you ever contact law enforcement regarding
18 the unexplained injury?

19 A. Yes, sir.

20 Q. And what's going on with the contact with law
21 enforcement?

22 MR. SLATE: Objection, Your Honor.
23 Hearsay.

24 THE COURT: I'm not sure what -- the
25 question was: "What's going on with the contact with

1 law enforcement?"

2 MR. LONGWORTH: Yeah. I'll rephrase it,
3 Your Honor.

4 THE COURT: Okay.

5 Q. (BY MR. LONGWORTH) What's the status of the
6 criminal investigation?

7 MR. SLATE: Objection, Your Honor. Call
8 for hearsay.

9 MR. LONGWORTH: If he knows, Your Honor.

10 MR. SLATE: Would also call for hearsay.

11 THE COURT: Without saying anything other
12 than yes or no, do you know what the status of the
13 criminal investigation is? Just yes or no, do you know?
14 Not what the status is, if you know, but do you know one
15 way or the other?

16 THE WITNESS: No.

17 THE COURT: Okay.

18 Q. (BY MR. LONGWORTH) And also, when I say
19 "status," are you aware if there is a criminal
20 investigation open right now?

21 A. Yes.

22 Q. And do you have any personal knowledge about
23 what is open?

24 MR. SLATE: Objection, Your Honor. Assumes
25 facts not in evidence. Assumes that there is one open.

1 THE COURT: He answered that there is one
2 open.

3 MR. SLATE: I think he answered whether or
4 not --

5 THE COURT: Well, he answered two
6 questions. One is: Do you know what status is, and he
7 said, no. That was followed up with whether he knows if
8 there is one that's open, and then he said, yes. So the
9 first one was objected to. I asked him if he knew one
10 way or the other, and he said, no, regarding what the
11 status was; and then the second question was just
12 whether something is open or not; is that right?

13 MR. LONGWORTH: The question was: Was it
14 open, and he responded, yes. And the next question was:
15 What was open, if he knew?

16 MR. SLATE: That would call for hearsay,
17 Judge.

18 THE COURT: That's sustained.

19 Q. (BY MR. LONGWORTH) I want to walk through this
20 with you a little bit regarding the time period of the
21 28th to the 18th. And prior to the 28th period
22 starting, you felt like the children were safe because
23 they were in a PCSP, correct?

24 A. Correct.

25 Q. And had you had contact directly with the

1 Fraziers?

2 A. Yes.

3 Q. How often would you say that you spoke to them?

4 A. Ms. Frazier primarily texted my supervisor
5 regarding updates, what's going on with Mason.

6 MS. PROFFITT: Your Honor, I'm going to
7 object to nonresponsive. He was asked how much contact
8 he had.

9 THE COURT: That's sustained.

10 Listen to the question.

11 Q. (BY MR. LONGWORTH) How much contact did you
12 have?

13 A. I've had a few conversations with Ms. Frazier.

14 Q. And has anybody else, that you're aware of, had
15 contact with Ms. Frazier?

16 A. Yes.

17 Q. And who was that?

18 A. My supervisor.

19 Q. And how often?

20 A. Perhaps, a couple of time as week, maybe.

21 Q. And does Ms. Frazier initiate these contacts or
22 was it -- or did you or somebody else initiate contact
23 with her?

24 A. I can't recall.

25 Q. And then regarding the nature of the contact,

1 was the contact Ms. Frazier telling you about any
2 concerns about the children?

3 A. She gave updates regarding Mason, regarding his
4 appointments and how he was doing, yes.

5 Q. And they updated you on how the supervision was
6 going with Mom?

7 A. Yes.

8 Q. What was your trust -- what was the amount of
9 trust you felt you had with the Fraziers being the
10 safety monitors?

11 A. I had a lot of trust.

12 Q. If something was going wrong with the children,
13 did you believe she would reach out to you based on
14 these other updates she has given you?

15 A. Yes.

16 Q. And after you spoke with Dad on the 28th, is it
17 true that you said you thought maybe he might take the
18 children?

19 A. Yes.

20 Q. And I think the officer stated that you felt
21 like you could've done better, but you should've checked
22 and you didn't check?

23 A. Correct.

24 Q. One of the reasons I believe you said you
25 didn't check is because the Fraziers never sent you an

1 update concerning that as being a problem; is that
2 right?

3 A. Correct.

4 Q. And you would've thought that they would've
5 sent you an update saying the children were with the
6 parents at that time?

7 A. Yes.

8 Q. So if you had known that the children were
9 gone, would you -- and were with the parents, would you
10 have considered that a continuing danger?

11 A. Yes.

12 Q. And why is that?

13 A. Had I known earlier, yes.

14 Q. So why was it a continuing danger?

15 A. When the children were in a PCSP?

16 Q. No. When they were removed from the PCSP into
17 the parents' home.

18 A. Because we have an unexplained injury, and the
19 children are back into the home of an alleged
20 perpetrator.

21 Q. And then later in the conversations that you
22 heard, you've referenced that Dad got -- Dad taking the
23 children. You heard that right?

24 A. Yes.

25 Q. When you said that, did you know that the

1 children were gone?

2 A. No. I didn't know they were gone until the
3 18th.

4 Q. And as soon as you found that out, you
5 contacted your supervisor on how to proceed, correct?

6 A. Yes.

7 Q. And then we ended up going to legal on the 19th
8 and filing the affidavit?

9 A. Yes, sir.

10 Q. And you believe there was a continuing danger
11 because the children were in the home with an alleged
12 perpetrator and a skull fracture that was unexplained,
13 correct?

14 A. Correct.

15 MR. LONGWORTH: Pass the witness, Your
16 Honor.

17 THE COURT: All right.

18 MR. NGUYEN: Redirect, Judge?

19 THE COURT: I'm not planning on going past
20 5:30. Any thoughts on -- I don't know if -- any
21 thoughts from anyone?

22 (Brief scheduling discussion off the
23 record)

24 THE COURT: The Court is ordering that
25 until we come back on Monday, the parents can have as

1 much supervised visitation as the caregivers feel like
2 providing, including overnights. The ad litem is to
3 have as much contact, if he wants, at any time between
4 now and then. Absent statutory emergency, no
5 interference with custody or visitation by TDFPS.

6 Anything else we need to --

7 MR. NGUYEN: Your Honor, my client's
8 requesting at least for a written order. If I don't
9 submit it today, I can swing by and give you an order.

10 THE COURT: Yeah. Or you can submit it
11 tomorrow morning. Ms. Ramon will get it to me.

12 MS. PROFFITT: Your Honor, do we need it on
13 the record that TDFPS is going to come with counsel so
14 that we can schedule that other hearing or?

15 THE COURT: I mean, we have somebody from
16 FPS here. They are aware that Counsel has asked that
17 someone be here. Whoever might represent them on
18 sanctions can be here. That's way out of my bounds. I
19 have no idea if it's going to be the county attorney's
20 office or their regional counsel. We had one sanction
21 hearing before where, I think, the AG's office stepped
22 in, So that's sort of out of my control. We'll schedule
23 it one way or the other.

24 (Court adjourned)

25

1 REPORTER'S CERTIFICATE

2 THE STATE OF TEXAS)

3 COUNTY OF HARRIS)

4 I, Cara Massey, Official Court Reporter in and
5 for the 315th District Court of Harris County, State of
6 Texas, do hereby certify that the above and foregoing
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9 writing by counsel for the parties to be included in
10 this volume of the Reporter's Record in the above-styled
11 and numbered cause, all of which occurred in open court
12 or in chambers and were reported by me.

13 I further certify that this Reporter's Record
14 of the proceedings truly and correctly reflects the
15 exhibits, if any, admitted by the respective parties.

16 I further certify that the total cost for the
17 preparation of this Reporter's Record is \$1,374.00 and
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19 WITNESS MY OFFICIAL HAND this the 14th day of
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21 _____/s/ Cara Massey

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23 Expiration Date: 12/31/18
24 315th Official Court Reporter
25 1200 Congress, 7th Floor
Houston, Texas 77002
Phone: 713-222-4956
Email: Cara_massey@justex.net